

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

BOSTELMAN: Are we on? All right, we're on. Good afternoon, everyone. Welcome to the Natural Resource Committee. I'm Senator Bruce Bostelman from Brainard and I represent District 23 and I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process, as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Introducers will make initial statements, followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for the introducing senators only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sheet-- sign-in sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to a page or to the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today but you would like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign for that purpose. This will be a part of the official record of the hearing. When you come up to testify, please speak clearly into the microphone, tell us your name, and please spell your first and last name to ensure we get the accurate record. We will be using the light system for all testifiers, and you will have three minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining and the red light indicates your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will-- will introduce themselves starting on my left.

GRAGERT: Thank you. Senator Tim Gragert, District 40, northeast Nebraska.

HUGHES: Dan Hughes, District 44, eight counties in southwest Nebraska.

AGUILAR: Ray Aguilar, District 35, Grand Island.

BOSTELMAN: And on my right?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

MOSER: Mike Moser, District 22, it's Platte County and the majority of Stanton County.

BOSTELMAN: To my left is committee legal counsel Cindy Lamm, and to my far right is the committee clerk, Katie Bohlmeier. Our pages for the committee today-- here today are Malcolm Durfee O'Brien and Joseph Schafer. With that, I will turn it over to Vice Chair Moser.

MOSER: Thank you. Senator Bostelman, welcome to your committee.

BOSTELMAN: Thank you.

MOSER: Does that feel kind of weird?

BOSTELMAN: Thank you. Good afternoon, Vice Chairman Moser and members of Natural Resource Committee. My name is Bruce Bostelman, and I spell that B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. Today I'm here to introduce LB1047, which updates our statutory language to reflect what NERC and SPP have highlighted in their investigations to the February 2021 polar vortex event and their existing definitions. This bill is about reliability for the citizens of the state today and into the future. Specifically, LB1047 does three things. The bill harmonizes definitions used by SPP and NERC-- sorry, I have something to hand out, which the pages are now providing to you-- by defining reliable and-- reliable or reliability as ability to provide firm or nonfirm generation that is able to be dispatched 24/7. This definition only applies to districts whose service territory includes a metropolitan city or comprises more than half of Nebraska's counties. From the front of it is the NERC definition, and on the backside is the SPP definition, taken from their documents. Second, it amends the policy of the state to say electric suppliers should provide adequate and reliable energy. And third, it requires electric suppliers who cannot store 45 days of fuel onsite to include in their annual report to the Power Review Board a plan-- a plan that identifies their capability to acquire and supply four to five days of fuel during peak summer and winter load conditions. This does not-- it does not require every electric supplier to store 45 days of fuel onsite; it simply asks them to have a plan to acquire and supply the 45 days of fuel. The February 2021 power outages gave rise to the awareness of Nebraska's public power resources structure and the state's policy of providing reliable, adequate energy to ratepayers. I will pause and say I want to thank public power during that time to-- the work they did throughout the state to do the best job they can to cut the grid up and operating and then power to as many people as they can. SPP noted that the event highlighted weaknesses of the components

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

of the supply side of the grid and the need to further assess SPP's ability to reliably operate the system with increased use of intermittent resources and further reduction of baseload resources. In fact, Mr. Nickell, who's the chief operating officer of SPP, has stated that SPP, and I quote, can't guarantee that we won't ever see this-- it's a Feb 21-- 21 event-- again, end quote. Barbara Sugg, president/chief executive officer of the SPP, has further stated that maintaining reliability within the SPP is an extraordinarily-- extraordinary effort in itself. In December 2021, NERC released its long-term reliability assessment, which concluded that the changes that renewables bring to the resource mix is the greatest challenge to reliability of electrical service throughout the United States. Although SPP was not noted as a top-ten area of concern in the next ten years, it cautions that all regions are at risk due to the interconnectedness of all regions. I say that, if you remember that SPP during the time we were getting-- we were-- and interconnectedness for me, so I believe it was, maybe from the east or from the west, was coming in to supply power; even though Omaha was being forced to shed load, we were receiving power from the-- the RTOs next to us. I believe this interconnection is important, as we've learned in February 2021 that SPP relied on those R-- RTOs to meet load within the SPP. In NERC's key findings, they state that generation will not be there in the future. I've handed out an infographic from the 2021 long-term reliability assessment for your review. The Key Finding 1 deals with reserve margins, and that's your colored graphic, if you look at it. Anticipated reserves fall below the referenced margin level in MISO beginning in 2024, Ontario in 2025, and California in 2026. For all other areas, anticipated capacity reserves are above their respective reserve margin levels for the first five years of this assessment period, indicating that there will be sufficient electric resources to meet peak demand if there are no changes in generation. Note, however, that this reserve margin analysis does not explicitly-- explicitly account for resource energy limitations due to fuel uncertainty. Key Finding 2 deals with energy risk. And since the publication of the ERO's probabilistic assessment in 2020, additional analysis indicates that risk of load loss and energy shortfalls persist in the Western Interconnection and MISO areas. If you look at the map, both east and west, we have some issues coming. They have identified issues into the future. Key Finding 3, extreme weather risk: Parts of North America-- America are exposed to energy shortfall risk in the near-term assessment period from wide-area and long duration extreme weather events like the 2020 and the 2021 western heatwave and the winter storm Uri in 2021. The key finding of frequency response said the frequent [SIC] response is expected to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

remain adequate through 2023. It's a year. Key Finding 5 was resource mix changes. Variable energy resources continue to grow and thermal resource capacity declines, and in most areas throughout this assessment period; as a result, increased attention on planning and operating a more complex resource mix is required. Considering these key findings, the need for reliable and adequate generation in Nebraska is critical to the citizenry and businesses in our state. I have said before and I have estimated that the February event costs Nebraskans about a billion dollars, and that's in increased energy costs. OPPD had to shed load and it cost them. Businesses were closed, livestock were lost, and more. This bill is about reliability for Nebraska. It is about protecting the citizens by planning for adequate generation when we need it most. It ensures we plan for generation today and into the future to meet the needs of the state. We are simply harmonizing our statutory language to NERC and SPP definitions and requiring electric suppliers to have a plan that shows their capability to acquire and provide 45 days' worth of reserve fuel during summer and winter peak conditions, and I'll be glad to answer any questions that you may have. Thank you.

MOSER: Thank you, Senator. Questions from-- yes, Senator.

HUGHES: Thank you. Chairman Moser. Thank you, Senator Bostelman, for bringing this. So I guess-- I guess the intent of this bill is to make sure that we have reliability of power production in the state of Nebraska. Is that a fair statement?

BOSTELMAN: Correct.

HUGHES: And your-- your wish or your intent to have a 45-day fuel supply at a minimum available, so how does that work for wind and solar?

BOSTELMAN: So wind and solar are the intermittent-- the-- the intermittent sources, and our baseload sources would be the-- the-- the 24/7/365 planning on those sources to be running, a plan that they run through that time, not that they're going to run through that time, that there will be unscheduled outages and planned outages. But basically it talks about a baseload generation to remain there to ensure we have that capacity.

HUGHES: So you're not considering any type of renewable as baseload.

BOSTELMAN: They can't provide a baseload.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

HUGHES: Right. OK, just wanted-- wanted to make sure everybody was clear on that fact. In-- have your discussions-- I mean, we've had hearings with SPP, you know, administration on the stuff. Have-- do you have any additional information that you may have come to you as Chairman since we had the committee hearing with them as to how they're handling to ensure we don't have another rolling blackout or more rolling blackouts in Nebraska?

BOSTELMAN: No, I think from the committee hearing in the documents received, this is information I have and-- and basically what Mr. Nickell said is they can't guarantee that it won't happen again.

HUGHES: Yeah, well, I-- there's probably no guarantees, but I think there will be some people coming behind you that hopefully will have-- be able to give some indication of what their-- the steps they're taking so that does not happen again.

BOSTELMAN: And I think-- and that's the point of this, is to-- is to update our statute to what SPP and NERC says on reliability and adequacy, make that similar to the same, and then just provide for plans in the future so that if something does happen, that-- on the fuel-- on the fuel storage, that we have available to carry over those times that [INAUDIBLE] need it.

HUGHES: OK, thank you.

MOSER: Senator Gragert.

GRAGERT: Thank you, Chairman. My question is, so just to clarify then, 45 days of baseload, so that is basically coal and nuclear in Nebraska that [INAUDIBLE]

BOSTELMAN: It's 40-- it-- it-- the-- it-- the thing, if-- what it says is that if you do not have that on site, there's a plan in place of how you will acquire it and how you will procure it. So that would be any fuel source. That could be natural gas, that could be coal, either of those, maybe at some point in time, hydrogen. Those are the-- those are opportunities. But what it does is provides for a plan, to explain the plan that they have in place to ensure they have that fuel available.

GRAGERT: If they're short of 45-day supply, then they just got to have a plan, they don't have to have the supply--

BOSTELMAN: Correct.

GRAGERT: --there at every day, 45 days, for future use or--

BOSTELMAN: Correct, correct.

GRAGERT: OK, thanks.

MOSER: Other questions for-- yes--

J. CAVANAUGH: Thank you.

MOSER: --Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser, and thank you, Senator Bostelman, for bringing this bill and signing it. I-- I missed your intro--missed-- beginning of your introduction, but I'm here and kind of looking at-- you and Senator Hughes talked about how we're going to measure or that this, the 45-day fuel, doesn't contemplate wind and solar because they're intermittent. Would your position be, in the definition of reliability here, mean that you're not including wind and solar as reliable?

HUGHES: It's an intermittent source. It's not a-- it's not a baseload source. So if you look at the SPP in the NERC handouts, this is very similar-- the definition I have is very similar to those, and I'm fine to redefine, if it needs to be, to reword it if-- if someone feels that we're not accurately--

J. CAVANAUGH: Oh, I'm not--

BOSTELMAN: --stating what they say,

J. CAVANAUGH: Oh, I'm-- I'm-- I'm not--

BOSTELMAN: But--

J. CAVANAUGH: I'm trying to clarify for my own purposes.

BOSTELMAN: Sure.

J. CAVANAUGH: Well, I'm just trying to clar-- so distinguishing between intermittent and reliable, I guess, is my question. Are you saying that intermittent and not reliable are the same thing?

BOSTELMAN: When you consider a capacity and generation, an intermittent facility is not able to provide 24/7/365? So that's not-- that doesn't meet that reliable standard, according to SPP and NERC.

J. CAVANAUGH: Well, wouldn't it be-- it-- I guess my interpretation of it, it would not be base load power, but it would be-- and maybe this is a technical question.

BOSTELMAN: It's not-- it's not a reliable 24/7/365. It cannot generate electricity during that time.

J. CAVANAUGH: OK. So I guess what I'm thinking of, in this context, "reliability" is maybe a term of art that has a specific meaning that would-- and in the hearings we had previously where we talked about this par-- the outage in February, reliability was more a definition-- was more defined by performing as expected, as opposed to available when you wanted to ask for it, which is-- that-- that would be dispatchable versus reliable.

BOSTELMAN: Right.

J. CAVANAUGH: Right. And so I guess my question is if we're trying-- trying to set up a situation here to discourage the use of renewable, lower wind and solar intermittent energy, or if we're just trying to establish criteria that [INAUDIBLE]

BOSTELMAN: No, no. Great question. And I appreciate the question. Exactly. No, I think that wind and solar has gotta be there and will always be there. What I'm-- what I'm-- what-- what I'm trying to-- what this bill is trying to accomplish is to make sure we do have a baseload gen-- we do have that capability, no matter what, to be able to meet that certain amount, that reliability, we're able to meet that, that obligation to the-- to our-- to our citizenry, you know, that we can-- we can generate 24 hours a day, 7 days a week, 365, with a source. Now you still can have wind, you still can have solar, or you still could have battery, if you-- if you will. But we still need a baseload type of generation out there that will provide a constant generation source for the-- for the state.

J. CAVANAUGH: So just to clarify, you-- you would be-- this would-- under this bill, you'd contemplate where we could operate on wind and solar, but as long as we have backup generation in the event that those were not available that we could dispatch in a dispatchable format to--

BOSTELMAN: I think that might be two different things.

J. CAVANAUGH: OK.

BOSTELMAN: I think we're still talking about a baseload generation with a backup-- your-- the backup-- neither of those were-- generate or have the ability to generate all the time. What the reliability just says is that we need to make sure we do have those, I'll call them, baseload facilities out there that generate. You still could have your wind and solar or batteries out there, but we just need to make sure we have the ability to generate in the case of what happened in February.

J. CAVANAUGH: Yeah, so-- and to clarify, you made me think of something else. So when-- for SPP's-- and I'm sure somebody else will be able to come and talk about this, if I remember, they would say in-- we'll use NPPD as the example. If they, you know, have certain amount of peak need, they need to be-- their-- their nameplate capacity has to be 112 percent of their peak need. Is that-- if I remember right. Somebody else will correct me if I'm wrong here.

BOSTELMAN: Their capacity needs to meet-- yeah, plus 12 percent--

J. CAVANAUGH: Right, plus 12 percent.

BOSTELMAN: --meet that need plus 12 percent.

J. CAVANAUGH: So I guess my question is, would you-- under this, would we be taking any wind and solar out of that nameplate capacity. or would that still be able to be contemplated in the 112 percent?

BOSTELMAN: Though, nothing in this, I think, eliminates wind and solar. I don't see that.

J. CAVANAUGH: Oh, I'm-- I'm talking about into how we count it, not whether it gets eliminated.

BOSTELMAN: I don't think wind and solar is-- is-- and someone in the industry can-- can answer that question better than I, but my understanding is, is wind and solar is not counted as a-- in the capacity where they're at, as-- as-- same as a baseload generation.

J. CAVANAUGH: Yeah.

BOSTELMAN: So maybe-- I could be wrong, and please ask those behind me. They can-- they can-- they're the experts, not me, so.

J. CAVANAUGH: Yeah, we're-- we're too dangerous people to have this conversation.

BOSTELMAN: Yeah, sure. That's fine.

J. CAVANAUGH: Well, I appreciate it. Thank you, Senator Bostelman.

MOSER: Any other questions from senators? Thank you, Senator Bostelman. Next proponent. Is there another proponent that would like to testify? We did receive 11 positions of opposition to this bill and none to support. OK, one more chance for support. Opposition, so anybody here to testify against this bill?

JOHN McCLURE: Good afternoon, Vice Chairman Moser and members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm executive vice president and general counsel for Nebraska Public Power District. Affordability and reliability are two cornerstones of our industry. While I'm here today in opposition to LB1047 on behalf of NPPD and the Nebraska Power Association, the opposition is based on the specific language in the bill and not the subject of reliability. We appreciate and agree with Chairman Bostelman's desire to assure the electric industry can reliably deliver electricity. Keeping the lights on and restoring them safely and quickly is part of our fundamental mission. Most interruptions of electric service occur at the local distribution level and are generally of short duration and are typically caused by animals, weathers-- weather or vehicle accidents. Outages also impact generation and transmission, as we've talked about. The availability of a particular power plant or transmission line may be due to a scheduled outage or a forced outage due to equipment or other issues. There are engineering design standards and regulatory operational standards in place to help assure the ability of generation and transmission facilities and systems to withstand various expected contingencies. A major factor is engineered reduction-- redundancies, which are built into certain systems. Operating experience, improved technologies, and other factors can enhance reliability. Currently, the electric industry is developing new cold weather procedures and training due to cold weather impacts from the past several years, and those were mentioned by Chairman Bostelman. Ultimately, there must be a proper balance between reliability and cost and other factors. Early in 1981, the Unicameral approved legislation requiring the public power industry to annually prepare what's known as the Load and Capability Report, and I have a copy of that to hand out when I'm finished here. The report forecasts the expected 20-year requirements for electricity, which is the load to serve it, and the generation to rely-- the load to be served and the generation to serve it. I've chosen not to raise specific language concerns regarding LB1047 other than to say we believe the proposed wording is confusing in several places, may not achieve the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

apparent underlying objectives, and may lead to unintended consequences. The bill touches on fuel security, as Senator Bostelman mentioned. We think this is very important. NPPD is proud of its diverse generation mix and our ability to have a two-year fuel supply at Cooper Nuclear Station, which today is in its 450th day of continuous operation. Our coal plants have weeks of supply, and dual fuel capability is utilized by us and others in our industry at-- at peaking units. We're committed to sitting down with Chairman Bostelman and others to explore in more detail his objectives and language to better understand the concerns and look for solutions. We all want an affordable and reliable electric system and appreciate Chairman Bostelman bringing forward this important topic. Be happy to try to answer any questions you may have.

MOSER: Questions from the committee? Senator Hughes.

HUGHES: Thank you, Mr. McClure, for coming. So what has NPPD done in the past 11 months to further ensure reliability in case we have another polar vortex?

JOHN McCLURE: OK. One of the things we're doing, as I mentioned, is a national initiative to look at cold weather procedures. Currently, for example, we have what is known as preventative maintenance that we do, and we schedule things at certain times, certain intervals. Some of that maintenance has been scheduled going into the cold weather season because we know conditions are different, so we had that written into maintenance practices. We're now looking at more comprehensive procedures and training. What do we need to be looking at? We were, I won't just say, fortunate. Our people had done a good job in power plants and other facilities, as had others in our industry in the state, to be prepared. We all know we're used to cold weather in Nebraska and we're used to having our facilities weatherized to deal with those conditions. But even from the storm in February a year ago, we found places where we weren't as protected from a cold weather-- extreme cold weather standpoint as we would have wished, so we found places to add insulation and do other things to harden the system, if you will, and make it even better capable. But as you know, throughout that event, NPPD's generation ran and ran well in excess of our own native load needs to help support others in the state and the region who may have needed additional energy. The other thing we've done is not so much on the operational side; it's on the communication side. We were not able to communicate as quickly with our customers, our wholesale customers, for example. Some of them thought they had an outage that was equipment induced on their own system because all of a sudden a substation wasn't distributing power. And so we've worked

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

very closely with our customers to find ways to put things in place that if we have contingencies anywhere close to this in the future, that we have a very clearly defined, proactive system to get that information out to our customers, so those are the two major things we have done.

HUGHES: OK, thank you.

MOSER: Senator Gragert.

GRAGERT: Thank you, Chairman Moser. I was wondering-- it sounds like great things as far as Nebraska has done. What are-- are the other states within the SPP required to do, you know, beef up their--

JOHN McCLURE: Some of this will be longer term. For example, the-- the program I mentioned is actually a program that was approved on, I think, August 24 by FERC for utilities to be looking at their cold weather practices. That-- that program happened very quickly relative to the pace of things in our industry, and it wasn't solely in response to February. It was some events from way back in 2018 further south. To your point, clearly, as we look at the event in February and prior events, it is more likely that it's those southern states that are typically not in as cold of an environment, they have a lot of equipment that's outside. When this event happened, there was a nuclear plant in Texas that tripped off because it had certain operational components exposed to the weather, and that caused a forced outage at that nuclear plant. So, yes, it's-- it's in each state. I'm sure their utility commissions and others are directing things. FERC and NERC are directing these generator practices to make sure that-- that utilities have both good procedures and training in place to better deal with extreme cold weather conditions. Unfortunately, if you look at most of the United States, we've always thought about our peak demand would be in the summertime, air conditioning, heat, etcetera. Now, if you get further north, maybe some northern states or certainly into Canada, they peak in the winter. They have more demand for electricity when it's super cold and dark for long hours than-- than they may have a summer. But the highest demand has always been in the summer. One of the things this has done for everybody is to rethink. And-- and Chairman Bostelman's bill points this out. We need to think about that winter peak also, which is almost always lower. But do we have the right resources, the right fuel supply to make sure we can meet it in the wintertime?

GRAGERT: Was the communications intra- or interstate or a combination of both?

JOHN McCLURE: Oh, it's been all. There have been lots of meetings. There-- there have been a number of meetings within the Southwest Power Pool. But as the Chairman's indicated, both FERC and NERC have had initiatives. They are-- they are the, you know, big regulators, if you will, over the top of all of this. Everybody needs to learn from this. And unfortunately, as I look at ERCOT, which is the Texas reliability region, they've had an event like this previously and they didn't get enough done.

GRAGERT: Thank you.

MOSER: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. And thank you, Mr. McClure, for being here. And just-- you pointed out Cooper Nuclear. I just appreciate the, I think it was, five-and-a-half-hour tour that we took of Cooper Nuclear back in December and the answer to every single question I had and then some, so I'd encourage anybody else to go take a look at how-- that impressive facility. So kind of based off of what Senator Gragert was asking, you know, you talked about NERC and FERC and them kind of putting, you know, regulations and things [INAUDIBLE] on. But after our two hearings, I think, that we had on the February event, it seemed to me one of the biggest concerning factors was our southern neighbors in SPP, that their lack of weatherization was what caused the problem. So internally in SPP, is NPPD or any of the other Nebraska entities exerting pressure on SPP to get those, Oklahoma or whatever states there has the problem, to get up to code? Because you just said yourself that Texas had this problem once before and still hasn't done it. So are we taking the necessary steps to exert the pressure that we can to make sure that we don't bear responsibility or bear the consequences of their lack of responsibility?

JOHN McCLURE: I think what I'm going to do is-- is we'll follow up on that question of how it's being addressed. Actually, I think the witness behind me, Joe Lang from OPPD, will be in a position to answer that. He serves on the members committee of SPP--

J. CAVANAUGH: OK.

JOHN McCLURE: --and he was kind of a-- he was heavily involved in the post-event analysis, so I think he can-- he can answer that question. I-- I would like to respond on-- on one thing. A question came up about capacity earlier, and-- and you talked about Cooper. So if you have a 100 megawatt wind farm, the capacity-- you can count that toward your capacity and toward your ability to serve on the hottest

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

day in the summer. But that accreditation will likely be less than 20 megawatts. That is what is-- is expected to be available to serve the load, so it's typically somewhere between 15 and, let's say, 20 percent, whereas Cooper Nuclear Station, which is a nominal 800 megawatt plant, its summer accreditation is 770. It's a little below that nominal rating because almost all thermal plants that require cooling are not as efficient in really hot weather. But in cold weather, they'll actually run above their nominal rating.

J. CAVANAUGH: OK. So as it pertains to this bill, I guess, which is what we're here to talk about, the definitions of reliability, firm and nonfirm, do you think that at that 20 percent below nameplate capa-- nameplate capacity, right? Is that the right word for the 100?

JOHN McCLURE: Well, nameplate is the 100 megawatts.

J. CAVANAUGH: OK.

JOHN McCLURE: The machines are designed to produce 100 megawatts.

J. CAVANAUGH: OK.

JOHN McCLURE: That's the nameplate. But their accreditation--

J. CAVANAUGH: Accreditation.

JOHN McCLURE: --or their reliability, really, I would say, is at the, you know, 15 to 20 megawatts.

J. CAVANAUGH: So the 15 to 20 percent is-- contemplates the intermittency.

JOHN McCLURE: Yes.

J. CAVANAUGH: So should the 15 to 20 percent be included in any conversation we're having about firm, nonfirm, dispatchable, in terms of a number, pure numbers we're talking about, of what amount of generation capacity we need to have?

JOHN McCLURE: I think all of that goes to the kind of ongoing conversation, dialogue we'd like to have with the Chairman as-- as we get others from the industry to talk about, you know, what's the best way to address this as far as language.

J. CAVANAUGH: And to be clear, we've had this conversation many times, and I don't know if you've been asked this before, but during that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

event, the-- you said NPPD performed basically-- was exporting power, was a net exporter, right?

JOHN McCLURE: We-- we were a net generator. Our--

J. CAVANAUGH: Yeah, a net generator.

JOHN McCLURE: Our generation exceeded what our load is. But as we've explained many times, we sell all our generation into the market. We buy all our load back to-- to serve our load. But we're selling more than we need for our load.

J. CAVANAUGH: And the wind and solar-- I don't know how much solar you have-- generation that NPPD has performed as expected during that situation, was my understanding.

JOHN McCLURE: I-- I think that's generally correct, and that-- that-- that was certainly true in SPP. One, they weren't expecting much wind at the time, and there were times when it was lower maybe than what they would have expected and were-- were times when it was higher.

J. CAVANAUGH: So to put a fine point on it, the January-- or the February, I think, 16 event was not as a result of renewable wind or solar. It was the result of other factors.

JOHN McCLURE: The biggest contributor was the lack of natural gas. There's 28,000 megawatts of accredited natural gas in SPP's footprint, and about half of that was unavailable either due to they couldn't get the fuel, so again a very important point about fuel security, or they had equipment problems either in the fuel supply from production-- 30 percent of the Permian Basin in Texas were shut down-- or they had equipment problems at their power plants and they weren't adequately weatherized.

J. CAVANAUGH: Thank you.

MOSER: Senator Groene.

GROENE: Thank you. Refresh my memory. Each member of the SPP has to have an-- is it 115 percent of accredited capacity?

JOHN McCLURE: I believe it's 112--

GROENE: Of the accredited?

JOHN McCLURE: But the follow-- yeah. You need a-- you need a 12 percent reserve margin above your capacity that you need to serve your load. Every [INAUDIBLE]

GROENE: Capacity or accredited capacity?

JOHN McCLURE: Accredited capacity. I'm sorry, you're-- you're right, accredited capacity.

AGUILAR: You have to have enough accredited capacity to serve your load.

JOHN McCLURE: Correct.

GROENE: So if the wind's blowing and you've got a whole bunch more capacity, that doesn't count. It's-- it's that accredited capacity.

JOHN McCLURE: It's the accredited capacity. For example, NPPD has a minimum load at-- the lowest load we have throughout the year is about a thousand megawatts. Our all-time peak load is 3,000 megawatts. So we have to be able to show we can serve everything in between there and each year--

GROENE: With your accredited load, the-- the--

JOHN McCLURE: With our accredited generation.

GROENE: --750, you said, out 800 of Cooper. What's-- what is Gerald Gentleman?

JOHN McCLURE: Thirteen hundred and sixty-five megawatts. Unit 1 is 665 and Unit 2 is 700.

GROENE: Is that accredited or capacity?

JOHN McCLURE: That's accre-- that's accredited capacity.

GROENE: What's their capacity?

JOHN McCLURE: That's really the maximum, but--

GROENE: So the most--

JOHN McCLURE: --it's accredited

GROENE: --very efficient, most accredited one-to-one ratio is coal at Sutherland.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

JOHN McCLURE: It is an important workhorse in our resource mix, both for reliability and cost.

GROENE: It's the-- is it-- is it the most reliable one you have?

JOHN McCLURE: I'd say our nuclear plant, again, 450 days of continuous operation is very impressive, and that's a reflection on the people, the investment, and the training of the people and the quality of that facility.

GROENE: How often is Gerald Gentleman shut down for maintenance, one or two of the--

JOHN McCLURE: I believe we typically have an annual maintenance, but-- but I'll-- we'll confirm that with you.

GROENE: And you do that in the spring or fall when demand is low?

JOHN McCLURE: We-- we try to do major power plants, NPPD and others, in what we call shoulder months, where there's less demand for electricity.

GROENE: You mentioned wind is-- it's 100 capacity, 20 with accredited. What-- has that been changed, what happened--

JOHN McCLURE: Well--

GROENE: --because the people who relied on wind, I heard, in our-- couldn't do their-- their agreed-upon 115 percent because they overrated their wind, their natural, their--

JOHN McCLURE: I'll let Mr. Lang behind me correct me if I'm wrong. My understanding is there's sort of an assumed number you can use for wind, and it's probably a little bit lower for accredited capacity, then you can get a number of years of actual data and if you can support it, it should be higher. You can do that. Obviously, the location varies. There are some places that have very high capacity factors and-- and maybe work out to have a higher accreditation. There are other places where certain farms were located maybe early on that haven't turned out to be the best location, so it's-- it's site specific based on what-- what's the experience with wind, but it's ultimately, what can you expect in the summertime on that peak load?

GROENE: Looking into the future, apparently, the board has looked into the future and knows that by 2050 you can go zero carbon. What's your

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

projection today of how much reliability you would have with the available energy sources at zero carbon?

JOHN McCLURE: I wish I'd brought a copy of the-- of-- of our carbon document. It is very much tied to reliability and affordability. So our expectation right now is we will get to zero carbon and not reduce.-- we will not-- we will not do it and reduce reliability or increase costs. That's the way the goal has been set up.

GROENE: Is that a goal or is that a dictate that in 2050 it has to be.

JOHN McCLURE: It's a-- it's a goal at this point. It's a strategic directive. It's a directive-- a direction that our board has decided to go in that direction. It is not dissimilar from utilities throughout the United States.

GROENE: Thank you. The free market ones, the privately owned ones?

JOHN McCLURE: Public power, cooperative generators, investor-owned utilities, all of them are directionally headed there.

GROENE: Thank you.

MOSER: Other questions? Senator Hughes.

HUGHES: Yeah. How close was NPPD to run out of natural gas last February during that? I mean, how-- how close was your supplier to being unable to meet your needs?

JOHN McCLURE: Well, all I can say is I recall that experience being an intense learning of supply and demand. The demand was high. The supply was low. So what happened? The price went way up. Our fuels people did an outstanding job assuring that we had natural gas, but obviously that was contingent on pipelines, on producers. But we were able to get the gas we needed and-- and run the facilities that we have with gas. We don't have that much gas in our system. We have the 250 megawatt Beatrice combined-cycle plant, which was running throughout almost all of that, except there was an equipment issue. We had something fail that was rated, a diaphragm, if I recall, that was rated to 30-some below zero and the temperature got down to like 40 below, something like that, and it failed and our crews figured out a way to fix it and get that back quickly; but also our peaking units, some of which can run on gas, some fuel, oil, we have dual fuel for several. We had the supply. We lined it up and had trucks coming with fuel oil and other things to make sure we could keep the lights on.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

HUGHES: OK, just want to reiterate that reliability has to come first. You know, affordability is important, but reliability has come first. When-- when it's 40 below, you really don't care what it costs. You-- you want to keep your house warm. I guess the other point that I-- that I think needs to be emphasized for the public, especially those who like renewable energy, you know, if-- if you listened to the-- to the gentleman from SPP last year, he said wind energy performed as expected during that polar vortex. What does that mean? As expected, as I recall, that was-- they anticipated wind generating 4 percent of the need during that polar vortex, and it performed as expected. Well, the other 96 percent needed to come from somewhere else, and that's where the base load has to come into play. Now, I mean, it's nice, you know, to-- to think that we're saving the planet and, you know, relying on carbon-free energy, but when it comes down to it, when that only is going to be 4 percent of the anticipated load, that's simply not enough. And I need to make sure that the public understands that all of these targets for carbon-neutral or net-- zero net carbon or whatever the goals are of the power generators in the state of Nebraska, it's going to cost at some point, so just a statement.

JOHN McCLURE: Can I make a comment?

HUGHES: Sure, absolutely.

JOHN McCLURE: And you-- you make an excellent point. I like to watch what happens with our energy mix and with the SPP energy mix, and some days there's almost zero wind in our mix and in the footprint of SPP, and that happened last year in February; and some days will see close to 70 percent of the SPP energy coming from wind. It just keeps creeping up. They-- they now have 30,000 megawatts of wind machines. But you're absolutely right. At the end of the day, reliability is number one. That's what we hear from our customers, and we've heard that from our customers well before February of last year. And so it is number one. We have to have dispatchability, and none of us are going to go willy-nilly into the future and just say, well, we can do it all with renewables, because we can't. But if there's affordable storage on a large scale, that can firm it up. Hydrogen, there's a lot of interest in the future of hydrogen. Again, directionally, that's where we're headed, but you're absolutely right. Reliability comes first, and for today, we still need-- we need these workhorses that we've had, the dispatchable units, to make sure we can keep the lights on.

HUGHES: So, I guess, to expand a little further on your-- your point that at some days we have zero renewable, other days we have as much

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

as 70 percent of the load, so I guess what you're saying is we've-- we have infrastructure to meet a hundred-- if everything is running at full bore, 170 percent of projected load, so we've basically overbuilt our power generation. How is that affordable?

JOHN McCLURE: We're certainly in a period of transition, and there is much more nameplate in SPP than there is peak load. The nameplate's around 90,000 megawatts. There's about 52,000 or -3,000 of peak load. And so, yes, there's-- there's more out there. Some of that's old stuff that's going away, but there's been a lot of-- of renewable energy built. I mentioned 30,000 megawatts. We didn't have that 30,000 megawatts 20 years ago, and we-- we didn't have a lot of it 10 years ago.

HUGHES: But I guess the point I'm trying to make to-- for the public that is listening is we're-- we're building way more capacity than we need and that does cost something. Somebody's paying for that. Even though it's coming into the market the way SPP has designed at a zero cost, you know, you guys will benefit. But the consuming public is still paying the bill, whether it's through higher rates, lower rates, or tax rates. Is that correct?

JOHN McCLURE: There are a number of factors, and you're absolutely right. We need to be smart about this period of transition so that we don't overbuild and that we don't prematurely force valuable generation out of the mix.

HUGHES: OK. Thank you.

GROENE: Senator Moser.

MOSER: Senator Groene.

MOSER: So what I think Senator Hughes was getting at-- thank you, Vice Chair. What good is they keep adding wind energy, 90,000, you said, or whatever, to 180,000, when one day it's 2 percent or 3 percent we're getting out of it. What good is that? You keep building more wind.

JOHN McCLURE: Well--

GROENE: What good to the point are we at saturation point where it doesn't make a difference? Because you said 70 percent of our load came from wind because of the whole SPP. Why are we building? I mean, because you've got to have at least that-- I think Germany found that out. You got to have a break point where you don't shut down the reliable energy and have it one day where you're 100 percent wind and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

the next day you've got to fire up a plant because the wind dropped off. Is the capacity for wind-- you know what I'm saying?

JOHN McCLURE: Sure.

GROENE: Diminishing returns: You keep building at a point-- you're to the point where you're going to have that day it don't blow.

JOHN McCLURE: A couple of points: One, I can't speak for the whole industry. I can only speak for NPPD here. We are about 10 percent wind, so we're-- you know, that's a relatively modest amount if you look at this part of the country.

GROENE: But that doesn't mean anything because you're-- you're-- you're-- you're the SPP. It doesn't make a difference if you are 10 percent. On a windy day in Oklahoma, you're buying wind.

JOHN McCLURE: Wind does dominate the market at times [INAUDIBLE]

GROENE: And you're turning-- and you're turning down Sutherland, right? Gerald Gentleman.

JOHN McCLURE: Right. No, that-- there-- you're-- it's a fact. A unit like that does follow the wind now.

GROENE: In the SPP, not just Nebraska.

JOHN McCLURE: Yes, because of SPP. SPP dispatches the lowest fuel cost first. So wind, which has zero fuel cost, will get dispatched first.

GROENE: Thank you.

MOSER: So to summarize, NPPD has a mix of energy sources and you adjust what sources you use based on the situation you're in. If you-- if wind is readily available, you use that because it's lower cost, and then you're not using as much fossil fuel, maybe. But you need to have a certain amount of base generation, which is what I believe Senator Bostelman is trying to talk about, to shave those peaks so that when your wind is not performing as strongly as it is on-- on sometimes, you have a way to make up what you're short.

JOHN McCLURE: Well, again, we-- we-- in this market, every generator sells its generation in, offers its generation in for each hour at a price and a quantity and--

MOSER: So SPP would decide--

JOHN McCLURE: It--

MOSER: --what-- what units around the state [INAUDIBLE]

JOHN McCLURE: It decides, by stacking those fuel costs, which units to dispatch, you know, subject to any reliability issues where they have to make decisions, and then each utility that has load buys out of that market at that energy price.

MOSER: Do you pay more when you buy it back than when you put it in?

JOHN McCLURE: It depends.

MOSER: You ever have negative rates?

JOHN McCLURE: Price-- prices-- prices can go neg-- oh, yes, the price can go negative.

MOSER: Do you have certain generation that has to run?

JOHN McCLURE: Our nuclear plant. We-- we can't swing it around, and we have minimums at Gentleman Station that we don't-- we don't operate below. But, you know, so you might-- you might-- it-- it's-- it's-- it costs less to keep that on and maybe pay a little bit of, you know, lose a little bit of money on the fuel. Doesn't happen real often, but you take it down the minimum, minimize the loss because there's a cost taking it off: startup time, startup costs, etcetera.

MOSER: So there's-- it's a systematic approach though. I mean, you're not picking on wind, you're not favoring carbon fuels.

JOHN McCLURE: The market itself is agnostic on that, on generation. It looks for the low-- the way it's designed, it looks for the lowest fuel cost. But unfortunately, while there's a lot of requirements about reliability, the market doesn't price reliability to the extent that maybe it should and the value of that capacity that's out there because there's no pay for the capacity.

MOSER: The discussion you had with Senator Cavanaugh about your zero-carbon goals, those are subject to experience as we move toward those deadlines, subject to the realities of-- of what's possible, evolution of electric generation. Maybe there will be new technologies that will change the mix.

JOHN McCLURE: Absolutely. If we had today's technology choices only and costs, I don't think it's possible to do that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

MOSER: To reach the zero?

JOHN McCLURE: And by the same token, I-- we certainly couldn't serve all of our load with conventional nuclear plants because, again, you need diverse resources. You need that peaking turbine that can come on and go up and down quickly to meet a change. You can't have all baseload, you can't have all renewables, you need a diverse mix, and there's emerging technologies that I think will be part-- clearly part of that solution in 2050.

MOSER: Do you feel like this bill causes you to look at some things that you wouldn't normally look at, or do you feel like this is just kind of like a synchro mesh transmission, it's going the same direction that you're already going and--

JOHN McCLURE: Oh, I think it's--

MOSER: --supporting what you're trying to do?

JOHN McCLURE: I think it's in the direction that we're going right now. We want-- we want reliability. We think that that is number one, as Senator Hughes pointed out. And-- and again, it-- it gets into more some of the details of the way the bill is written, and we-- we look forward to having a discussion with Chairman Bostelman about the [INAUDIBLE]

MOSER: Or would you rather see the bill just go away? Don't answer that question. [LAUGHTER] OK, any other questions? I don't want to put you on the spot like that. OK, thank you very much for your testimony.

JOHN McCLURE: Thank you.

MOSER: Next opponent. Greetings.

JOSEPH LANG: Good afternoon, Vice Chairman Moser and members of the committee. My name is Joseph Lang, J-o-s-e-p-h L-a-n-g. I'm the director of energy and regulatory affairs for Omaha Public Power District. Thank you for the opportunity to testify in front of the Natural Resources Committee. I'm testifying on behalf of OPPD in opposition of LB1047, a bill to change requirements regard-- regarding annual Load and Capability Reports filed with the Nebraska Power Review Board. Reliability and safety is our number-one priority. All of our decisions have this commitment at the forefront. Reliable-- reliable service is documented in OPPD's strategic directive number four, which states: OPPD shall assure all customer energy requirements are met continuously through the use of its generation resources and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

purchased power portfolio. While this is a noble goal we take very seriously, we know that extreme weather and Mother Nature sometimes means outages for our customers. Within the language of LB1047, these types of occurrences are not accounted for, and it requires utilities to assure electricity is provided 24/7 to meet the-- the-- to meet reliability. That is simply something that electric-- electricity providers cannot guarantee. We have a reliability strategic directive that the OPPD board requires of us to achieve and maintain top-quartile reliability performance in the industry. This directive requires us to meet certain baseload generation availability and outage factors. OPPD has been successful in meeting or exceeding these benchmarks. In fact, OPPD and Nebraska as a state rank among the top in the country in terms of reliable electric service. Meeting these benchmarks is possible by performing necessary maintenance and upgrades in accordance with North American Electric Reliability Corporation, or NERC, standards. OPPD has continued to increase its annual budget expenditures and reliability, resilience of our system. The concepts addressed in LB1047 have merit, and we would like to work with the committee to improve the language. However, some of the reporting requirements in the bill are beyond our control, for example, including verification of supplier's ability to deliver such fuel amounts needed, including means of delivery such as ground transportation or pipeline, again, subject to fuel, is not something we can predict. Therefore, we cannot provide them in the Load and Capability Report. The state's utilities have a great reliability story to tell, and we can and should continue to better explain our reliability efforts. We look forward to working with the committee and crafting a report that better presents this information and appreciate Senator Bostelman's emphasis on this topic. Thank you for considering my testimony, and I will answer any questions you may have.

MOSER: Questions from the panel? Senator Groene.

GROENE: Thank you, Vice Chair. For OPPD, what percentage of-- I've heard NPPD say 10 percent is wind or-- I believe is what they said. What is your capacity, would you consider, wind?

JOSEPH LANG: When you say capacity, so we have about a gigawatt of--

GROENE: No, I mean percentage-wise of your total production--

JOSEPH LANG: So--

GROENE: --or use.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

JOSEPH LANG: So energy, just shy of 40 percent, in that-- in that ballpark, of our utilization is renewable energy.

GROENE: So do you-- I know NPPD owns a windmill field as a public power. Do you own your wind energy?

JOSEPH LANG: No, we-- we-- we typically contract wind energy with private developers to utilize the-- the production [INAUDIBLE] grids.

GROENE: I understand the field at O'Neill-- is that an exclusive contract with OPPD?

JOSEPH LANG: Sorry?

GROENE: That wind field that went up into-- around O'Neil, was that a exclusive contract with you guys? You buy it all?

JOSEPH LANG: Correct. It's called Grand Prairie, if I'm familiar with the--

GROENE: And that is your major supplier?

JOSEPH LANG: That is a large facility we-- we have, yes, that--

GROENE: That you have, you contract with--

JOSEPH LANG: --that we contract with.

GROENE: So how long is the contract?

JOSEPH LANG: I believe it's around 20 years.

GROENE: So in 20 years, the public, who owns OPPD, might be-- not have the capacity they expect because you don't have this contract?

JOSEPH LANG: So if that contract were to go away or expire, then certainly OPPD, through our planning processes, would ensure that it's replaced and-- and that we have appropriate and adequate capacity, certainly.

GROENE: Why even have an exclusive contract when you can just be part of SPPD and buy it off the open market?

JOSEPH LANG: Because, similar to what Mr. McClure noted, we have the 112 percent SPP requirement, and so we're required to have firm service from generation resources to meet 100 percent of our load and 12 percent beyond that.

GROENE: Assume that qualifies you--

JOSEPH LANG: Yes, that contract--

GROENE: --because you have an exclusive contract.

JOSEPH LANG: Correct, and-- and not the full capacity of it is utilized to meet that SPP requirement, but similar that was discussed earlier, a percentage of it is.

GROENE: So prior to this move towards wind, OPPD was like NPPD. You had the capacity to service your-- your owners--

JOSEPH LANG: Correct.

GROENE: --with the power-- nuclear power plant you had, even more.

GROENE: Correct.

GROENE: Thank you.

JOSEPH LANG: You're welcome.

MOSER: Other questions? Yes, Senator Cavanaugh

J. CAVANAUGH: Thank you, Vice Chairman, and thank you, Mr. Lang, for being here. I think Mr. McClure said maybe you'd be the person to answer the question about, have we, as being anybody from Nebraska, exerted influence in SPP to ensure that these other states are complying with winterization, updating, so things like what happened in last February don't happen again?

JOSEPH LANG: Yes, extensively, on multiple fronts. So I'm on the steering committee that-- with the SPP board chairman and the SPP CEO, amongst others that are working with SPP to ensure that we-- we build out a significant list and a report of recommendations and learnings from the February 2021 events. And, yes, in that capacity, we have. Furthermore, we-- at OPPD, we have folks that are involved directly with SPP on various working groups. Also, the Nebraska Power Review Board, now Chuck Hutchison represents the state of Nebraska with the-- what's-- what's named the Regional State Committee at SPP and I-- and the Nebraska Power Review Board is very effective with-- with SPP, as well, so as a state, in addition to OPPD, certainly, NPPD is involved, LES is involved, etcetera. But all of us are-- are very involved with SPP, and SPP's process is unlike some of our neighboring RTOs and ISOs in that their process for making changes and recommendations,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

etcetera, are very much driven by the members and-- and us, certainly, being a member.

J. CAVANAUGH: So as, I think, Mr. McClure said that Texas had a similar problem that caused this issue years ago, the federal regulatory has gotten involved and told them what changes to make and they didn't make them. Is-- can you give us an idea of are there going to be repercussions if they-- the-- these other entities-- I just always think of Oklahoma. Maybe I'm maligning Oklahoma wrongly, but if folks Oklahoma don't make the weatherization updates, comply with these recommendations, is there going to be some kind of repercussions to them that would-- or are there going to be any, I guess?

JOSEPH LANG: So NERC, earlier, the state of-- the North American Electric Reliability Corporation has recently developed winterization standards that are strict standards on how to winterize your facilities, etcetera, and developing more as we speak. So those are-- they're mandatory requirements that are penalized by a million dollars per day per violation. They're very, very strict, mandatory standards. That will be one that helps, which is a multitude of items. But at the Southwest Power Pool, we're also looking at a 12 percent that we're referring to, whether we need to change that 12 percent and increase it. And so do we need to ensure that there is more planning reserve margin available to ensure that-- that events like this are-- are not problematic.

J. CAVANAUGH: So-- well, I guess from, I think, our perspective, and again, I've said this many times, it seems like everybody in Nebraska did the right thing and it was other people who weren't-- you know, caused-- that caused this problem. And so I guess my question is, now that we've identified this issue, we've identified ways that-- to address it, is there going to be any-- I -- I mean, I don't know if-- would cutting-- cutting people off not-- like we talked about, we-- we underwent rolling blackouts to ensure the-- the safety of the system or reliability of the system and structure doesn't get damaged. But is there talk of, if you don't address these, then you will bear more of the brunt of an event that is precipitated by your action or anything like that? That would-- I guess my-- I'm asking, are we going to be insulated from the next event or are we going to be left out hanging again because somebody else isn't taking action?

JOSEPH LANG: Yeah, absolutely. You're looking for the stick. So there's a multitude of elements to that. Yes, we're-- exactly what you suggested, we are intimately looking into as to whether load should be shed in the same fashion, controlled load sheds in the same fashion

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

that was applied in February of 2021, which is specifically to that. Another element is, if you don't meet your requirements, there are penalties imposed by SPP, financial penalties. So there are, you know, in addition to the NERC, you know, million-dollars-per-day penalties if you don't meet it, in addition to the-- the operational changes that we're looking into to ensure that people are held accountable for having and maintaining their generation portfolios and availability, etcetera, there's a multitude of items there to ensure that folks-- that entities are held accountable and able to serve their load appropriately.

J. CAVANAUGH: Thank you.

MOSER: Senator Groene.

GROENE: Thank you. Another question, you heard NPPD said they were a net exporter throughout the February. Was that your case too?

JOSEPH LANG: Throughout-- so February 15 and 16, we had ample generation to meet our load, correct? Those were the days that--

GROENE: Through that whole period of time?

JOSEPH LANG: So through the period earlier, the week prior, we did have some issues with-- with our generation fleet and it wasn't at the same period of time that the controlled outages--

GROENE: Because the wind went-- the 40 percent that you got tied up and wind wasn't available?

JOSEPH LANG: It really was not wind related, necessarily. It had to do with coal facilities, natural gas facilities. We had a kind of a multitude of issues going on that--

GROENE: They were shut down or--

JOSEPH LANG: We had some-- and I don't remember specifically, but we had some maintenance issues that we brought up as quickly as-- and we had everything running by the time the--

GROENE: So the wind at that period was supplying this 40 percent that it needed to?

JOSEPH LANG: I don't recall what the wind was producing that week specifically. I-- I-- and I think it was addressed earlier, noted earlier. But during the outages, the controlled outages on the 15th

and 16th, maybe more specifically to what was being discussed, was-- SPP has a total of about four gigawatts of accredited wind capacity in the SPP footprint. And during those, the days, 14th-- I'm sorry, 15th and 16th of the outages-- of the controlled outages, wind was producing around 5 gigawatts, and it ebbed and flowed, but wind was covering its accredited capacity requirements during that period.

GROENE: It has 40, you said? It has how much capacity?

JOSEPH LANG: Four gigawatts of--

GROENE: And it was doing five?

JOSEPH LANG: And it was operating about five--

GROENE: You mean at the capacity-- not the capacity, but certified or--

JOSEPH LANG: The energy output, the real-time energy output of the wind facilities in the SPP footprint were producing around five gigawatts of-- of energy.

GROENE: And that's the accredited, and accredited is four, so they're--

JOSEPH LANG: They're- yes.

GROENE: --staying above it.

JOSEPH LANG: Yeah. Correct.

GROENE: Thank you.

JOSEPH LANG: You're welcome.

MOSER: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. I'm going to ask a question that's specifically related to the bill. I know we've all kind of seemed like we've forgotten about this. The 45-day supply, is that something you guys already do, is that something that is wildly impossible? Is-- I guess I just don't know what the frame of reference would be.

JOSEPH LANG: Coal and nuclear facilities, 45 days is-- is very-- very doable for-- and-- and in how the bill reads specifically is capability-- capable of supplying 45 days onsite fuel storage, and

for-- again, for-- for coal and nuclear facilities, that's absolutely doable. Yeah, that's-- that's typical.

J. CAVANAUGH: What about natural gas?

JOSEPH LANG: Natural gas, not typical at all. So natural gas facilities, some-- so speaking for OPPD's facilities and-- and the new facilities that we're actively working on constructing, of about 600 megawatts of natural gas facilities, we have certainly natural gas supply for, you know, depending on season, etcetera, but we have natural gas supply to those facilities, and then we have 72 hours of onsite fuel oil. And so if-- if natural gas facilities were constrained in whatever way-- whatever way, or however that might be different, you know, constrained from a supply standpoint, maybe there's a failure on a natural gas system, etcetera, we have three days where we could run at full capacity at those facilities without using any natural gas.

J. CAVANAUGH: On fuel oil?

JOSEPH LANG: On fuel oil, and--

J. CAVANAUGH: And--

JOSEPH LANG: --maybe just an element there would be that's on site, ready to go. And how that practically works is if you're in an event like that, you're going to start trucking additional fuel oil in, so 72 would in essence be the minimum period of time that you could run without natural gas.

J. CAVANAUGH: And is there-- the reason that you don't keep storage of any amount of natural gas on site, is that a logistical question? Is that a-- I mean, what's-- how-- I mean, is this the-- would a tank be enormous, I guess, is my--

JOSEPH LANG: Yeah. Yeah, you-- you hit it. So natural gas companies, they-- you know, if you drive around, you'll see natural gas storage facilities that are-- that are certainly utilized to have a natural gas storage facility at a natural gas electric generation plant would be cost prohibitive, space prohibitive. There would be a number of elements that would-- they'd cause that not to be practical.

J. CAVANAUGH: Do you have any idea what the cost to-- to build something to store 45 days' worth of natural gas would be for OPPD?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

JOSEPH LANG: No. No, I don't. It would-- I don't-- we wouldn't consider that because it would be very high and-- and impractical from a space perspective.

J. CAVANAUGH: But unless--am I misreading this, that it would be required by this-- adoption of this statute, correct?

JOSEPH LANG: The way I read the statute myself is that they're asking-- Senator Bostelman, in-- in his-- in drafting is looking for reporting requirements. And so if you do not have the 45 days, the capability to serve fuel for-- onsite for 45 days, there are additional reporting requirements.

J. CAVANAUGH: OK.

JOSEPH LANG: And-- and I-- as I included in my testimony, the concern that we have with that is the reporting requirements, we're just-- it's not possible for us. We-- the 20- year reporting requirements for natural gas specifics and delivery specifics, we don't have contracts that go out 20 years, and we do that intentionally so we ensure that we have competitive prices for our facilities. And so to be able to answer and provide what is being requested, we'd have to pour some assumptions in there that would be guesswork in nature and-- and not practical for-- for-- to supply.

J. CAVANAUGH: Thank you.

GRAGERT: One last quest--

MOSEER: Senator Gragert.

GRAGERT: One last question: How often do you go under 45-day supply? Do you-- is-- is that-- is that your normal operations right now, day in, day out, that you've got more than 45 days' supply in Nebraska?

JOSEPH LANG: So to maybe clarify the question, to-- presumably you're referring to a coal facility having a 45-day supply of coal. And do we go under 45 days? Yes, we, we do.

GRAGERT: So you maintain 45 days without-- say at the coal plant now. And that's in add-- and that would be-- and then nuclear would be in addition to that.

JOSEPH LANG: Correct. I would say it ebbs and flows between the 30 days, plus we-- we don't hold ourselves to-- to-- to storing 45 days of-- of onsite coal for our coal facilities.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

GRAGERT: Thank you.

MOSEER: Senator Hughes.

HUGHES: So you indicated OPPD must be building a 600 megawatt gas-fired plant?

JOSEPH LANG: Two separate facilities--

HUGHES: OK.

JOSEPH LANG: --an aggregate approximately 600 megawatts

HUGHES: So procure-- procuring gas to supply that, are-- are they going to be peaking plants or how-- how are they going to fit in the mix of OPPD's generation?

JOSEPH LANG: Yes, correct, generally peaking.

HUGHES: OK, so how-- how do you plan for fuel supply for something like that? I mean, say, well, you know, normally we're going to need it in July and August, maybe we need it in February, maybe we need it in January. How does that work? I mean--

JOSEPH LANG: Sure.

HUGHES: --how do you-- how do you make a deal with your supplier in order to make sure you've got sufficient gas to run that when you need it?

JOSEPH LANG: So step one is meeting the SPP accredited capacity requirements, and so we look at our fleet and see what we need to do to meet those requirements. And certainly there's a [INAUDIBLE] we're looking at our load and we're looking at our resources to-- to-- to fulfill that plus 12 percent. And so to those facilities, first, it's seasonal. The loads cherry-- the loads change by season. And so our resources to fulfill those loads and what we need to fulfill the 112 percent changes as well. To the extent we need accredited capacity in-- in summer season, winter season, we obtain-- so-- so, one, we obtain natural gas contracts with-- with MUD, with various providers, and then we have the capability to also procure firm service, and firm service carries with it a higher degree of expectation for delivery. And so maybe that's how that folds together, if that's helpful. Then the fuel oil is also a very big piece of ensuring that we have-- if natural gas-- the natural gas system were to become constrained, for,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

again, whatever reason, we have that on-site fuel oil to help mitigate that variability.

HUGHES: OK, thank you.

JOSEPH LANG: You're welcome.

MOSEER: So you're required to have capacity of 112 percent of your load, but you may not produce that much energy if the SPP doesn't need it.

JOSEPH LANG: Correct, if it's not-- it-- it's--

MOSEER: If it's not required, you don't generate it.

JOSEPH LANG: Correct.

MOSEER: Yeah. And if you had members in SPP that were members but they-- they couldn't generate their load plus the 12 percent, then they may be kind of parasitic and cause you problems. So that's why they require each company to be able to produce their energy plus a 12 percent cushion?

JOSEPH LANG: Yep. Yep, and no resource-- no resource is perfect. They-- you know, we have outages, we have maintenance, etcetera, so kind of that cushion--

MOSEER: Well, that's the plan, yeah. Something could-- could go wrong.

JOSEPH LANG: Yeah.

MOSEER: As I recall, there were some power producers that couldn't produce what they claimed, they were credited for, during the shortage there, the outage. Have they addressed those producers to reevaluate what they can produce to make sure we're not relying on power that, you know, may or may not be there?

JOSEPH LANG: There's a multitude of efforts on that front. One-- one large piece is winterization of natural gas supply wells. That's an economic decision for natural gas suppliers. There's not a regulatory requirement for them to do that. But there's a lot that-- I would say, economically speaking, there's a lot of pressure on them to do that, to ensure that they can provide natural gas during these high-price periods of time.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

MOSEER: Is natural gas-- and I don't know if this is within your realm of knowledge, but does the gas flow out of the ground or does it have to be pumped out of the ground?

JOSEPH LANG: I-- I-- I have some thoughts, but I'm not-- I'm not specifically sure.

MOSEER: Yeah, I don't-- I don't know either, but-- and do they compress it? Is that where they got into trouble with their facilities, they-- you know, when you compress gas, they might freeze up.

JOSEPH LANG: The way I understand it is the-- the natural gas supply limitations were due to wellheads, and when they freeze up, it-- it blocks the passage of nat-- natural gas from the well into the natural gas system.

MOSEER: OK, thank you. Appreciate your testimony.

JOSEPH LANG: You're welcome.

MOSEER: Thanks. The first testifiers get the most questions.

JOSEPH LANG: Happy to help.

MOSEER: Yes, thank you. More opponents? Going once, going twice.

GRAGERT: [INAUDIBLE]

MOSEER: You're going to give up? [LAUGH] OK, any other opponents?

GRAGERT: You got the wrong file.

MOSEER: Oh, you had the wrong file. I'm sorry. I thought maybe I scared you off.

AL DAVIS: Sorry about that, Senator.

MOSEER: Welcome.

AL DAVIS: Good afternoon, Senator Moser and members of the Natural Resources Committee. My name is Al Davis. I'm a registered lobbyist for the 3,000 members of the Nebraska chapter of the Sierra Club, here to speak in opposition to LB1047. On its surface, LB1047 looks like a good bill, adding language which requires a reliability standard for power generation. But the requirements of the bill would result in redundancy standards which will inevitably drive up the cost of power to all Nebraskans while providing minimal improvement in the already

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

exemplary services provided by the public power entities. The bill makes demands on NPPD and OPPD to meet the needs of all Nebraska power users and appears to include even those entities producing their own generation and those purchasing wholesale power from outside Nebraska, which seems an impossible task. The citizens of Nebraska have benefited from decisions made by public power over the years to invest in technology and infrastructure which strives to meet the goals of LB1047. NPPD and OPPD already have reliability standards significantly higher than those of multiple share owner-- shareholder-owned entities in other states who must weigh the needs of their customers against the affordability of the rate structures. Winter Storm Uri demonstrated the vulnerability of the nation's power grid to extreme weather events, but wasn't really a Nebraska problem, except for our commitment to the Southwest Power Pool. What the polar vortex did demonstrate was the need for more transmission across the entire region. Nebraskans stepped up to help our neighbors to the south just as they would step up to help us in an emergency, and the minimal outages, though inconvenient, were short and not terribly disruptive. The standards set for reliability in the bill are unachievable without massive investment in generation, storage, and transmission which will rarely be called upon. Stockpiled fuel covered with ice is not a reliable source of energy, even if there are 45 days' worth of it on the ground, and a gas pipeline disruption by a supplier to the power companies is beyond the control of those entities, despite assurances given them by the gas providers. NPPD and OPPD are doing a good job providing affordable and reliable power to their customers already. There is no need for this bill. Thank you very much.

MOSER: 'Thank you. Do we have questions for the testifier? OK, thank you--

AL DAVIS: Thank you.

MOSER: --for your testimony. More opponents?

JOHN HANSEN: Mr. Vice Chairman, members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union and also their lobbyist. Al-- I think almost everything that needs to be said has been said. The two things that sort of struck me as I read this, and I am not an engineer and I am not a lawyer, but it seemed to me that when I read the definitions that we were trying to get to for reliability, that it appeared to me that the requirements that were being asked for, for our two largest utilities in the east end of the state, seemed to be asking for them to make commitments to more than

just their service areas. It was the state-- we were talking about the state in general, which to me didn't make any sense because we have Tri-State in the west end of the state. We have folks who are not served by either NPPD or OPPD. So if you're causing a reliability requirement to be made on them, then if you're asking them to be responsive to the entire state, then that seems-- that's well past belt and suspenders; that's several belts and several suspenders in excess, it seemed to me, so-- and-- and there-- I always entertain the idea that I could be entirely wrong. But as I read it, that's what I got. And the other thing that I thought needed more consideration was, as we talked about, you know, the takeaways-- and I-- I really think the committee for all the work that they have done relative to bringing in the Southwest Power Pool and also the-- our public power utilities and talking about what were the takeaways, what did we learn from the event last spring, last February, is that one of the things that struck me as we talked about congestion is what really congestion is, is the lack of transmission capacity. And so while we're talking about fuels and we're talking about those other things, if we're really talking about reliability, we have to really rethink where we're at relative to transmission, because if you do have excess capacity and you can't get it from where it's produced to where it is it needs to go, so what if you haven't fixed the problem? And so it seems to me that there-- there was a missing component relative to reliability, and for those reasons we are not in support of LB1047 but would be in support of an effort to try to better clarify the-- the move toward reliability and the definitions of it and the reporting of it. And with that, I'd end my testimony and be glad to answer any questions in the off chance I was able to.

MOSER: Thank you. Questions? Well, I guess you're going to get off easily.

JOHN HANSEN: Boy, it's a good day. Thank you.

MOSER: Thank you. More opponents? Anybody here to testify in the neutral capacity? If there are more neutral testifiers, move toward the front of the room so when we're ready, you're ready to go and keep our hearing moving along. Go ahead. Thank you. Welcome.

TIM TEXEL: Senator Moser and members of the committee, my name is Tim Texel, T-i-m, last name's T-e-x-e-l. I'm the executive director and general counsel for the Nebraska Power Review Board, so we're the entity that this report gets filed with, the annual Load and Capability Report. The board is the state agency with primary jurisdiction over electric suppliers in the state of Nebraska.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

Obviously, I'm testifying neutral here. My board authorized me to testify in order simply to emphasize the importance of what appears to be the primary issue in this bill, the significance of reliability in the retail provision of electric service. The importance, and I-- and I think this has been said, so I don't know if I'm going to add a lot in some of these, but the importance of reliability can hardly be overstated in the electric industries. In the customer surveys and polls that I've seen, reliability is usually number one in-- in people's concerns. Affordability is, of course, close behind, but for most individuals, and especially businesses, reliability is-- is their first and foremost concern. Of course, both have to be weighed against each other, and that's always true. Nebraska, for some time, has been rated as having one of the most reliable electric systems in the U.S. In some of the recent surveys I've seen, I couldn't put my finger on one for today, but we were number one. I found one in 2019 with U.S. News and World Report. We were number three for electric reliability. So those are enviable positions and obviously shows the importance of that and how good a job our utilities have done in Nebraska. And having such reliable systems is not just important for our existing customers, which of course it is, but businesses looking to locate in Nebraska, especially commercial and industrial customers with high electric usage-- you have cold storage facilities, server farms, things like that-- that's obviously a crucial factor they take into account in addition to cost. But reliability is-- is very important to those businesses, so it's also an economic development tool the state has. One thing I might point out is the definition for reliable or reliability in Section 2, subsection (6), it's line-- lines 30 and 31 on page 3, that definition applies to, in this case, only NPPD and OPPD, but it's in our main definition statute, which would apply to everything in Chapter 70, Article 10, that committee might want to consider moving that into Section 70-1025, so it just applies to the Load and Capability Report because it might give the impression that reliability is not important for the other utilities in the state, instead of just NPPD and OPPD, which that definition deals with. So I just wanted to mention that, but I won't go into any other details in there. And I-- I would point out, too, it's been mentioned these are standards. This is a report, so this wouldn't be setting any standards. It's an information-gathering tool, so I just wanted to caution. We have to be careful not to say this is a new standard or a mandatory requirement. The board is not able to do that in this area.

MOSER: Hey.

TIM TEXEL: That's all I have.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

MOSER: Concludes your testimony?

TIM TEXEL: Yes.

MOSER: OK.

TIM TEXEL: Yes, sir.

MOSER: Questions for--

GROENE: No, go ahead. Thank you.

MOSER: Let's take Groene first. Senator Groene.

GROENE: Thank you. I do have seniority.

MOSER: Well, maybe you'll ask something and then he won't have to.

GROENE: Yeah. Your board used to approve wind fields, right, and then we took that away from you? Any-- any kind of new generation in the state?

TIM TEXEL: Now there's the-- the privately developed have an exemption for renewables, yes. And if the-- if our public power entities would build, then we'd still have jurisdiction over those.

GROENE: Do you oversee that, too, or just public?

TIM TEXEL: Well, we oversee all power suppliers in the state. But for the renewables built by privately developed, we now have the-- the new statute, the privately developed renewable energy generation facility, so it's a notice provision, not an actual approval provision, that my board has. So they send in a notice to us that they're going to con-- they're going to work with our Game and Parks to make sure they don't harm any-- threaten our endangered species. They have to certify that they're not a public power entity. They have to certify this will-- facility will use renewable fuel. And if they do all that, then I have to send a letter back within ten days--

GROENE: So--

TIM TEXEL: --that authorizes it.

GROENE: --when OPPD decided to shut down-- Fort Calhoun, was it? Did they have to get your approval?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

TIM TEXEL: No, we don't have approval for decommissioning of-- of facilities.

GROENE: What about-- I mean, is your purpose in life to make sure Nebraskans have reliability and-- and the-- and the public powers work for--

TIM TEXEL: I'd say affordable and reliable and-- and to avoid conflict and competit-- competition between the utilities. In some limited circumstances, we can hear complaints from customers, but we were created to avoid conflict and competition between the utilities, in large part because many years ago it was a problem.

GROENE: But you have no jurisdiction over reliability, to make sure they are--

TIM TEXEL: Well, that's more of a function of NERC and-- and those type entities, NERC and FERC, the actual reliability. We approve the new facilities and-- and it looks at a public convenience and necessity, sort of a certificate of need, whether they need this and whether it duplicates--

GROENE: So what part did you play in when-- when-- that was a major change in public-- public power in the state of Nebraska when OPPD decided not to own pro-- their production but to go out and contract. I understand why they did it, because of the federal-- federal kickbacks. A public entity couldn't apply for them, so they-- but did you--

TIM TEXEL: Are you talking about the wind?

GROENE: Yeah, the--

TIM TEXEL: OK.

GROENE: That was a huge change in-- historically with Nebraska Public Power where we owned our production. Did you play a part in allowing them to make that huge change, to all of a sudden say 40 percent of our capacity is no longer owned by us?

TIM TEXEL: We're not a policymaking entity, so we enforce it. We work under it, but we didn't-- we weren't part of the decision making for that change, no.

GROENE: So what do you do every day when you show up?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

TIM TEXEL: Well, we-- we approve transmission and generation facilities. We regulate the-- and-- and deal with the charters; kept us very busy lately with the public power districts when they amend their charters, like for redistricting. We do-- we are the repository for and the approval authority for the service areas that they have. And then when they build transmission-- or I meant when they-- well, I've already said, when they build transmission or generation, with generation, we usually hold a hearing and they have to meet certain standards and we make sure that they do for that too. So we have a-- a number of things, but decommissioning is--

GROENE: So you do all public power districts, not just the--

TIM TEXEL: Well, technically--

GROENE: --Dawson Public Power and Custer that services me--

TIM TEXEL: Um-hum.

GROENE: --you-- you deal with those too?

TIM TEXEL: Oh, yes.

GROENE: So do you look into-- when they decide to contract and buy from OP-- NPPD for their-- for their supply, you look at those contracts.?

TIM TEXEL: We do not have authority over those contracts. The Legislature has never given us authority to approve the power purchase agreements, so we don't have authority over that.

GROENE: Thank you.

MOSER: Just as a clarification of what I think Senator Groene was asking, Power Review Board was put together to control competing entities of the-- the power companies in the state so that you could negotiate service areas and keep them from overbuilding facilities that they didn't need--

TIM TEXEL: Yes.

MOSER: --those sorts of things--

TIM TEXEL: Yeah, like I said, it's--

MOSER: --not so much in the operation of their utilities.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

TIM TEXEL: No, we don't get involved in the operations side. That might be why we don't have decommissioning authority. But when they build something, we want to make sure it doesn't duplicate, that they need that facility, and that's some of the criteria the Legislature gave us that we look at, that they-- that what they're building can do that, meet that need in the most economic and feasible means. So we would be looking at those criteria whenever they build transmission and generation.

MOSER: So did you change anything much based on that outage we had?

TIM TEXEL: The winter storm in-- Uri in February..

MOSER: Yeah.

TIM TEXEL: --last February? Did we change--

MOSER: Well, do you have any new policies to address anything that happened or is that--

TIM TEXEL: Well--

MOSER: --really beyond your scope?

TIM TEXEL: Yeah, that-- that would be something that SPP and the utilities are dealing with. My board member, who's on the Regional State Committee, is very active at SPP, dealing with that. Our contractor who works-- who sits on the cost allocation working group there, is very active in those things. So those two are much more active than the agency itself and me. I've been involved with the communications aspect. They-- SPP, I think, has come up with a very good communications plan. After the Winter Storm Uri event, we had some that were-- some instances that was less than good communications, and I've been involved with the Nebraska Emergency Management Agency and Nebraska Department of Environment and Energy to come up with a plan for who they notify in Nebraska and when and when the chief of staff and the Governor would need to know about this. So that side, the communications side, I've been involved in. But the operational side, we don't-- and I tell people who call, we don't get involved and we don't have jurisdiction over the operational side of utilities. When you--

MOSER: You don't shut off anybody's power.

TIM TEXEL: No, and we don't have when they collect a debt, you know, if they feel they are mistreated by personnel at the utilities. We get

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

calls on those things, but we don't have those type of jurisdiction over the utilities.

MOSER: OK.

TIM TEXEL: Their elected officials do.

MOSER: All right. Thank you very much. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. And thank you for being here, Mr. Texel. So the-- this would-- the requirement of this proposed bill would be for a modification of a report that your department or your office receives.

TIM TEXEL: Yes.

J. CAVANAUGH: Is that right? What would you use this for?

TIM TEXEL: Well, it's to look at the-- I think, as Mr. McClure said, I mean, it's to look at the 20-year supply, the adequacy, and that's the purpose of this plan, because in the past, with our public power entities, a little bit different now with SPP, but, you know, they operated on a parochial basis. They all operated for their particular service area. This made us look at things from a statewide perspective, and all the utilities had to work together, so we were the entity that brought them all together to look at things at a statewide perspective. And then it was information gathering on that, but then the Legislature and my board would have that information to look at. Are we going to run short? How soon are we going to run short? And that-- that changes, but sometimes, you know, they show that they need generation in the state in 8 years; sometimes it's 15. So when it gets down to something like eight, my board is very concerned. We can't order them to build something, but it makes the utilities take a look at it and the Legislature can know about it too. So that's-- that-- I mean, the report is to find out that information and know if we have a problem on a statewide basis.

J. CAVANAUGH: So that's the current report.

TIM TEXEL: Yes.

J. CAVANAUGH: So this proposed modification would change the report in some--

TIM TEXEL: It would add new parameters to it, yes.

J. CAVANAUGH: And would those additions be helpful or--

TIM TEXEL: I guess that's in the eye of the beholder. I mean, that's kind of a policy decision. I mean, it--

J. CAVANAUGH: Aren't you the beholder, I guess?

TIM TEXEL: Well, we en-- we enforce the policy, so we don't set it, so I'm-- I'm kind of reluctant to say whether we need it or not, because that's a decision the Legislature makes and then we enforce that. You know, reliability is obviously a very crucial factor in the electric industry. So whether we need this bill or not is something that the senators make and not that I make, and my board kind of instructed me not to get into the policy side of things, so I'm reluctant to answer that.

J. CAVANAUGH: Well, yeah. Well, and I-- I'll try not to get you in trouble, but-- so how long has this report-- the current reporting requirement been in place?

TIM TEXEL: Oh, it's-- I don't remember if it's been in place since the '60s, when we were created, or the '80s, but it's been in place for decades and decades to do this report.

J. CAVANAUGH: OK. And over all of those years, so we've gone through several 20-year periods of-- that have been forecasted as required, have people been clamoring for this type of information when they get the report and say, gee, I wish it had the-- this information in it?

TIM TEXEL: I don't know we've had anybody say that in particular, no. I mean, my board occasionally asks for additional information in the report. We did that recently when my board wanted the utilities to report on how they intended to meet their carbon emissions standards, the-- the goals, not standards-- have to be careful. But the goals they were setting, there were some questions on that, so my board wanted them to add in the report how they intended to meet it. Are they going to shut down certain plants, things like that? The information we got back is they don't have those details yet, the utilities. They have a goal. They haven't decided what exact measures they're going to take to meet those goals that are further out. But that's one thing my board asked them to do, and they did put in some information about-- but it was kind of high level. My board, you know, we'll see.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

J. CAVANAUGH: So you asked for more information than is required, enumerated here in the statute, and we didn't make a statutory change to empower you to ask for that though.

TIM TEXEL: Correct, for-- for that issue.

J. CAVANAUGH: If you need more information, do you need a statutory change to ask for that, more information, then?

TIM TEXEL: I guess that would depend on what the utilities-- if we asked for this type information, it's a lot more. What we asked for, like my example, wasn't a lot of work because they either know the answer or they don't. You know, this reliability and the 45 days and-- and all this is a lot more work. It'd depend on what the response of the utilities are if we asked them to do something like this. We don't have a mandate to do it and we're asking them to pick up a lot more for the report, so I guess it's-- it's an outstanding issue whether we need that authority to tell them to do it. Right now what the statute says is they file this report to us-- or with us, sorry. It doesn't explicitly give us the ability to tell them to put more in the report. So we don't technically, I don't think, have that authority to tell them to do it. We could ask them to, but they could say, we're going to file it under the parameters that are in the statute now.

J. CAVANAUGH: To this point, have you asked them for any information that they've refused to give?

TIM TEXEL: No, they've been very good about giving us the information or-- or any changes to it. We haven't made many changes to it over the years. That's why I gave the one recent example because my board really over the years has not desired to change the parameters the Legislature sets. We didn't see a need to. They did have some concerns after the Winter Storm Uri about the dispatchable units and if they would be closing to meet the needs of the carbon goals. So that was one reason for that, but that's one of the few times we have ever asked them for a lot of additional. Sometimes it's how to report it, but not usually extending what they're reporting on.

J. CAVANAUGH: Thank you.

MOSER: Senator Groene.

GROENE: So you said you asked them if they were planning to decommission anything--

TIM TEXEL: Well, what we--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

GROENE: --[INAUDIBLE] zero [INAUDIBLE] like 2,000.

TIM TEXEL: --asked them was just how they planned to meet their-- their zero-carbon goals, or their carbon- neutral goals. I don't know exactly how they phrase it, but that's what we asked them to just-- how they plan on meeting it. At this point, they didn't have that kind of concrete level to give us.

GROENE: What your purpose is by the Legislature, I haven't ever read that, but is trade areas, that they don't overlap, and transmission lines?

TIM TEXEL: The service areas?

GROENE: Yeah, that's your--

TIM TEXEL: That's part of it. We approve the service areas and we enforce that provision that they not serve in each other's and we grant the waivers.

GROENE: Do you request them to do transmission lines or--

TIM TEXEL: No, we don't have authority to tell them to build something. We only approve it when they do. They have to bring an application to us, so we're responsive.

GROENE: And they have to prove to you why it's needed.

TIM TEXEL: What's that?

GROENE: They have to prove to you why it's needed--

TIM TEXEL: Right.

GROENE: --how it fits into the overall picture?

TIM TEXEL: Right.

GROENE: So OPPD shuts down Fort Calhoun, never even-- you had no say in that.

TIM TEXEL: Correct.

GROENE: They decided to go buy-- could have bought from Iowa, could have bought anywhere, renewable energy. So they got a board out of-- completely out of control and they decide to shut down all of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

power plants and buy everything wind on the market. Do you have any control over that?

TIM TEXEL: Well, we don't have control over their contracts. That might run into issues with FERC and NERC and how much accredited capacity.

GROENE: I mean the source-- the source of the energy for the public. Could they buy it all on the open market?

TIM TEXEL: Well, I-- I guess the bottom line for us is we don't have control over their contracts--

GROENE: You have no say over that?

TIM TEXEL: --or decommissioning. They may have difficulty meeting that 112 percent accredited capacity you're talking about, but--

GROENE: Well, if you get a 40- year contract--

TIM TEXEL: If they have enough accredited capacity, they could do that. We don't have any authority over those contracts or decommissioning. So the scenario you set up, the answer would be, yeah, we don't have authority to stop them from doing something like that if they chose to.

GROENE: To shut everything down and decide--

TIM TEXEL: I don't think--

GROENE: --to buy all green.

TIM TEXEL: If they decided to do that, but they'd have to-- yes, I guess the answer is yes--

GROENE: All right, thank you.

TIM TEXEL: --for purposes-- your scenario, yes.

MOSER: OK. Any other questions? Thank you for your testimony.

TIM TEXEL: Thank you.

MOSER: Appreciate you being here today. Any other neutral testifiers? It's been so long, I almost forgot where we were. OK, Senator, would you like to close?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

BOSTELMAN: Thank you, committee, for-- and for the testifiers who came today to the discussion, I don't think we're that far off on coming together on-- on looking at language that maybe meets the-- would be agreeable between all parties involved here, with PRB and the utilities and that. You know, the one example established some of the-- and really what this is doing is trying to look at what SPP and NERC has done already and just put that into-- into statute, the reliability. And I don't think we're all that far off. And the IBC, International Building Code, we have something already out there where the engineers and builders and contractors, everybody come together to form a reliability standard in the state so that one-- one material over another material that is-- isn't preferred over another. And that's just what this is trying to do, is trying to ensure that we have reliability within statute and-- and provide that opportunity for the state. You know, one thing with SPP was talked about earlier. I don't want to take too much more of this time because I think we've talked this-- enough information on this. But SPP, when we did talk to SPP, representative from NPPD after the hearings, yes, they do have things that they're looking at. It's going to be in place, but it's going to take years for that to happen; it's gonna take a long time for that to happen. So this is an opportunity for us to come together. All the utilities agree that reliability is-- is a high priority for them, so let's just-- we'll be able to get together and-- I think, and get something worked out. SO with that, I'll end and take any other questions you may have.

MOSER: Questions for Senator Bostelman? OK, thank you. Are you ready to open on your next-- that concludes the hearing on LB1047 and bring us to LB1046, going backwards.

BOSTELMAN: All right. Good afternoon, Vice Chairman Moser--

MOSER: Go ahead.

BOSTELMAN: --and the Members Natural Resource Committee. My name is Bruce Bostelman, spelled B-r-u-c-e B-o-s-t-e-l-m-a-n. I represent Legislative District 23. Today I'm here to introduce LB1046. The bills serve two purposes. One is to provide for half of the board of directors for NPPD and OPPD to be appointed and two of the-- and two of the-- the CEOs, NPPD and OPPD, also be appointed by the Governor. The events of February 2021 caused significant concern and cost for Nebraskans, none of which any of us wants to see occur again. From testimony that we received at both LR48 and LR136 from the chief operating officer of SPP, CEOs of Nebraska's largest public power generators, city utility managers, mayors, and a public power

district, we saw that generation, transmission, and distribution is a very complex and evolving industry. Investigative reports by NERC and SPP have identified numerous areas that need improvement and changes needed to be made. Significant challenges will need to be overcome as greater dependence on electricity will occur, and it is important that the board of director positions of NPPD and OPPD are composed of individuals with broad backgrounds, to include industry-specific work experience to meet these challenges. The first part of the bill addresses the change to half of the board members being appointed by the Governor. All sitting directors will complete their term and the bill allows for appointments to be made as term ends-- terms end. It also ensures that at least one of the appointed board members is from a low-populated area to represent our smaller communities and farmers. If the board member's position is being changed to an appointed position, they may apply for that position. There are no political party requirements. However, it is my strong recommendation-- my strong recommendation that the appointments are made emphasizing electric generation, transmission, or distribu-- or distribution working knowledge to include, but not limited to, engineers, pipefitters, operators, energy management, maintenance, electricians and dispatchers, to name a few. Why change now and why look to fill the positions with individuals with experience in the industry? I'll refer to the SPP President Barbara Sugg to answer, and I quote: To manage this high volume of variable energy, we rely on accurate forecasting, our robust transmission system, a diverse generation mix, and our equitable and efficient wholesale energy market, end quote. When SPP was further questioned on how they're planning to handle the challenge to res-- to resiliency in the future, Mr. Nickell, the COO of SPP, responded, and I quote: We hope to address it, end quote. Mr. Nickell-- Nickell earlier in the hearing stated that SPP, I quote, can't guarantee that we won't ever see this February 2021 event again, end quote. Furthermore, NERC concluded in its 2021 long-term reliability assessment that, quote, government, governmental policies, changes in comparative resource economics and customer demand for clean energy, end quote, are changing and resource mix, which, quote, presents the greatest challenge to reliability. As the system transitions, changing weather systems present new challenge-- presents new challenges and fuel becomes inherently less secure. By having individuals who have working knowledge of the electric generation industry, we will have board members who know how to ask the right questions to get the right information in making difficult decisions. The one thing I've heard from new board members is that there is so much to learn. Think of it this way. If you were sitting on a-- if you were sitting as a board member of a large business that you knew

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

little about, would it not be beneficial if you had members that have working knowledge of that business for you to ask questions to and to know what questions need to be asked and answered to get the right information to make the best-informed decision? Currently, there are a total of 19 board members on the two boards, with only four board members having any prior working knowledge of the industry. The challenges these boards will face will significantly benefit from working knowledge of the industry itself, I am sure the districts will tell you that they train all their board members, but you and I both know that this-- this is not a substitute for hands-on knowledge. Times are changing and demand is increasing. By making this change, we will provide for expertise, along with community involvement on each board. The second part of the bill will make the CEOs of NPPD and OPPD positions appointed by the Governor. This change will take effect when the current contracts of the CEOs expire. This change will ensure a public process will take place in the hiring of the new CEO. By making these two changes on how the leadership of our largest public power districts are made up, we are putting the interests of Nebraskans first and ensuring that they will have adequate and reliable energy into the future. Thank you, and I will now take questions.

MOSER: Questions for Senator Bostelman? Senator Cavanaugh.

J. CAVANAUGH: You know I can't resist to ask questions. Thank you, Vice Chair Moser, and thank you, Senator Bostelman, for this interesting topic to discuss. So I've got, I guess, a few questions, but-- so first off, you want to take away half of the elected board? Is that right? Did I-- I-- of-- I'm-- well, we'll say-- say OPPD, we'll talk about OPPD.

BOSTELMAN: It's-- it's half. Right now it's--

J. CAVANAUGH: Yeah.

BOSTELMAN: Yeah, it just is half of each, yeah, right.

J. CAVANAUGH: OK. And I guess-- and I'm not trying to be cute or silly or anything, but you don't trust the voters in the OPPD district to elect people--

BOSTELMAN: They're--

J. CAVANAUGH: --who can do this job?

BOSTELMAN: No, it's not that. The thing is, is we're lacking the expertise. If you look at those 19 board members, 4 of them, 1 of them

is a person who owns solar power company. There's a couple retired power general managers, and that-- that's all the experience we have on there. The point of what I'm trying to make and what we're trying to discuss and what this discussion is about is, is there a way and how do we try to bring people on board? Because as you said earlier, we're looking at a wide generation mix, wind, solar, batteries, whatever it might be, natural gas, nuclear, hydrogen, coal, whatever it is, and the SPP has come out and said it's getting really hard, really difficult. And my point of this discussion is, is trying to find the way to we get those people in there that can provide the-- the best knowledge resource for that board as members to make those decisions. Some of them have said is they don't want to be spoon-fed from the CEO, but how do I know what answer to--- what question to ask that?

J. CAVANAUGH: That's--

BOSTELMAN: Does that answer your question?

J. CAVANAUGH: Yeah. No, I think that's a fair answer. I guess my response and question would be, doesn't that logic apply to NRDs, MUD, the Legislature? Should-- wouldn't-- doesn't the idea that these are complicated issues, complicated times, and that it would be good to have subject matter experts, but aren't elected boards meant to be representatives of the individuals and not subject matter experts, necessarily?

BOSTELMAN: Yeah, good comment. You know, we already have public power entities in this state and in the country that have appointed board members. That already exists. The Power Review Board are appointed board members. So this isn't anything out of the ordinary. This is just trying to provide that board with-- with individuals to, you know, provide that expertise, provide that knowledge base. This is nothing against any of the current board members at all, none, none whatsoever, but it's trying to provide, as we move into the future, if we're to continue to electrify more and more into the future, it's going to get more difficult. So it's trying to find a way to get those type of individuals to be a part of that board to make a difference.

J. CAVANAUGH: And so this applies to NPPD and OPPD, and we have the statements earlier about other-- why wouldn't it-- if it's important and tech-- the technical expertise is important, why not every power board in the state?

BOSTELMAN: LES already does.

J. CAVANAUGH: What about Tri-- Tri-County or Tri--

BOSTELMAN: Tri-County has appointed board members.

J. CAVANAUGH: OK. I didn't know the answer to that, so that's a good answer. And then as to the-- why is the Governor-- if we put subject matter experts on the board, why does the Governor need to appoint the CEO and not this board that now has subject matter expertise?

BOSTELMAN: Say the last part again? I missed it.

J. CAVANAUGH: Well, if-- if we are going to appoint people that are supposed to be subject matter experts, why do we need to take authority away from them if we-- in that situation?

BOSTELMAN: I don't see us taking that authority away. Do you want the general managers to serve the REAs in that area, to make those appointments, to make those decisions? No. What is that authority? I'm-- you know, my question would be, who would do it if-- if it wouldn't be that person sitting in that office?

J. CAVANAUGH: Well--

BOSTELMAN: And I don't think it's taking it away because anyone in those communities can still apply and still be a part of.

J. CAVANAUGH: I'm-- I'm asking about the CEO portion. Sorry. Would that-- did it--

BOSTELMAN: On the board, the board members.

J. CAVANAUGH: Right, so my understanding currently, and maybe somebody behind will be able to correct this, in OPPD, the CEO was hired by the board. Is that not it?

BOSTELMAN: Correct.

J. CAVANAUGH: So in your bill, the Governor would be the one who hires, picks the CEO.

BOSTELMAN: Correct.

J. CAVANAUGH: So my question is, why-- I guess, why does the Governor need to appoint the CEO?

BOSTELMAN: Well, let's take LES. LES, the board members hire, the person is confirmed, and they're confirmed by the mayor.

J. CAVANAUGH: OK.

BOSTELMAN: So do we do the same route for this as-- do you-- do you change it? Do you have the board members hire and the Governor approve it? Is there another way? I'm-- I'm-- this is one opportunity to have a discussion as to, is there another way to do this?

J. CAVANAUGH: I guess it ultimately comes down to the question of, why is the Governor more competent to make these decisions for Omaha, for OPPD, the footprint of OPPD, than the people who live in that district, in that area? Why-- why is removing it further from the people going to give us a better result? Because the Governor is not a subject matter expert, he is just another elected official.

BOSTELMAN: Well, the Governor appoints a lot of positions, so I guess I don't see that this takes any away from-- the people can still apply. A person may not want to run for whatever reason, but they will apply for an appointment. And how do you-- how do you-- how do you get those-- how do you encourage those-- those individuals that we're looking for-- I think we're looking for-- to be a part of that board? And to me, what's come to my mind first and what this bill is about is to allow the Governor to do that. If there's another way, I'm-- I'm open to hear what that would be.

J. CAVANAUGH: I'm sorry. I'm taking a lot of questions here. And do you have any-- I-- any information or is anybody-- anybody who's going to testify have this information as to the number of these type of subject matter experts who have run for this office and lost or anything along that line? Do you have any idea about that, I guess?

BOSTELMAN: I know I have talked to several of them that have. I don't know that I-- you know, that number, I don't know. You'd have to go back through, you know, the-- the elections to find out. I think there are some here that will testify that-- that are either on the board or were on the board that would be subject-- subject matter experts, so.

J. CAVANAUGH: Well, thank you. It's an interesting topic.

BOSTELMAN: Sure.

MOSER: This process would kind of politicize the selection of the board and the CEO of the utility. Do you think that's good?

BOSTELMAN: I don't see it as politicizing it. I see it as I talk to the IBEW of OPPD and talk to them, you know, they have an interest in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

having one of their union members be there. So do you make it a requirement that there's a union member that has to be appointed?

MOSER: But--

BOSTELMAN: You know, that's-- I don't-- I don't-- no, I don't see it as a political--

MOSER: How long of terms are-- are you proposing?

BOSTELMAN: The same. They don't change. Terms don't change.

MOSER: They're, what, six years, are they?

BOSTELMAN: Right. We see on confirmations on-- on a number of-- of commissions and boards and that, political affiliations go across the board. You know, that's not-- that's-- and-- and the whole point of this is not to make it a political thing. It's the best person to serve in that pol-- in that position.

MOSER: Then every six years you could have a different Governor and you could have new board members.

BOSTELMAN: You could.

MOSER: And what if it was--

BOSTELMAN: And you could have an election--

MOSER: --what if it was a Governor you didn't like?

BOSTELMAN: And you could have an election that would do the same thing. And you're right, and maybe it's a Governor that you wouldn't like, but that Governor still has that same ability to do that. But you still have elections every six years. Right? So that person could still be replaced in six years.

MOSER: Well, it's still a democracy, so-- or a republic.

BOSTELMAN: True.

MOSER: You have to allow for elections. Senator Groene.

GROENE: Thank you, Vice Chair. So you mentioned you strongly recommend, but why can't we put into law that you have to have one person with an engineering degree in nuclear physics or you have to have in neu-- one board member has to be a, you know, a-- whatever

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

types of-- see, I don't even know what types of fields of endeavors service that whole industry, but I'm sure engineers, nuclear, that we wouldn't-- you know, a lot of our boards, you say, have to have one person that has this capacity, this person who's an attorney, this person, and when-- as to the Governor's appointees. Wouldn't it be wiser to do that--

BOSTELMAN: Sure.

GROENE: --so we could have--

BOSTELMAN: I specifically didn't do that because I didn't want to make it too prescriptive at this point in time. Talking with the Power Review Board, sometimes they have difficulty. It is prescriptive. You have to have an attorney, an engineer, accountant, whatever. Sometimes it's hard to find that person. And if you make it too prescriptive, I think it-- it makes it too difficult to find a person to fit into that category for that position--

GROENE: Thank you.

BOSTELMAN: --so it-- you could have-- it-- it-- it-- I think it would make it more difficult. I may be wrong, but if that's something that needs to be changed, it could be changed. But that was my thought behind it, why-- why we didn't-- why I did not do that.

GROENE: Thank you.

MOSER: Senator Gragert.

GRAGERT: Thank you. Just a quick follow-up with that question there. Couldn't you make it that you either worked with a power company for 20 years or with-- or 10 years, you know, with that, and not make it so prescriptive or have a degree and-- and go that route instead of having the Governor-- you know, to even apply for the job?

BOSTELMAN: Say that again? I don't know if I followed you.

GRAGERT: To even apply for the job or to be on it, you would have to have some kind of background, whether you work for a power company or you have a engineering degree or some kind of degree and-- and without getting so specific, you know, that if you feel you need more?

BOSTELMAN: It's possible, but I think then you're-- you're going to get too-- too prescriptive on it and you're going to-- you're going to

get into areas where there may not be the-- that skill set or that-- that degree, if you will, there.

GRAGERT: OK.

BOSTELMAN: I don't-- it may not. You know, it's open for discussion, but I think that's why-- that's why I didn't do that at this point--
[RECORDER MALFUNCTION]

MOSER: Thank you.

BOSTELMAN: Uh-huh.

MOSER: Further questions? Senator Cavanaugh.

J. CAVANAUGH: Thanks. Thank you, Vice chairman and thank you, Chairman Bostelman. I'm just looking at-- so this, again, I focus heavily on OPPD, but I'm looking at the section on page 6, where it says that it would divide up the districts into four equal population districts. That would basically double the size of a representative district for the elected member.

BOSTELMAN: It, it could. And we looked at that to try to figure out a way with Bill Drafters on how to draft something different. And this was the best that we come up with, I guess we'd say at this point. So it could, yes, double the size, it's going to have to.

J. CAVANAUGH: Right. Halving the number of elected districts.

BOSTELMAN: Right.

J. CAVANAUGH: And you have a portion in here about making sure that somebody is from outside of the city, three miles. I guess I'm trying to remember who all was on the OPPD board from outside of the city of Omaha. But my question is this, I mean, essentially, you want to make sure you get somebody appointed, but wouldn't it necessarily have this, have this effect where Omaha is going to have a disproportionate power because, if divided into four districts, Omaha-- all the districts are going to have a large part of them are going to be comprised of Omaha, probably. Right?

BOSTELMAN: Well, and I think if I understand your question, what the intent of this is, try to make sure that that rural, rural community has some representation.

J. CAVANAUGH: And so would your contention be that as it is currently, the districts are currently divided, that there is not adequate representation for outside of the cities, cities of the metropolitan class? And I think you have a couple other listed, but--

BOSTELMAN: I believe that it doesn't allow for that. Yes.

J. CAVANAUGH: I'm sorry?

BOSTELMAN: Yes, you're correct.

J. CAVANAUGH: But not accurate representation. So I mean, so that's kind of addressing a separate issue when we're talking about the subject matter expertise. It's sort of a more representation of individuals within the footprint. And I guess my question is, why are we picking it one group of people other than-- if the espoused purpose is to get more subject matter expertise in there, why are we picking that-- setting out that a small population that is not subject matter expertise specific representation while diminishing the representation of individuals of, of the people overall?

BOSTELMAN: Because those, that small population, if you will, that probably never is represented because they just don't have the population to overcome the city over here. And so they don't have, you know, that population just doesn't get represented.

J. CAVANAUGH: In big districts.

BOSTELMAN: Just because of numbers.

J. CAVANAUGH: Right. And but if we were to, I mean, another way to go to increase rural representation would be to say OPPD needs to have 15 representatives on the board as opposed to the number that they have, which somebody will tell me, because I should know this. But we'll say nine or whatever that they have now. And that would, by virtue of the population breakdown, would ensure that somebody is going to come from the, you know, outside of the city.

BOSTELMAN: Potentially, sure.

J. CAVANAUGH: That's-- well, if you had to-- if the districts were drawn in such a way. But anyway, thank you.

BOSTELMAN: Sure.

MOSER: Other questions? OK, thank you very much.

BOSTELMAN: Yeah, thanks.

MOSER: We received communication of 89 opponents and no proponents and no neutrals. OK, are there proponents for the bill that would like to testify? Proponents. Are there some here who would like to testify against? Opponents.

NEAL SUESS: Good afternoon. Excuse my voice, I'm coming off of a cold. Thank you, Vice Chairman Moser and members of the Natural Resources Subcommittee [SIC]. My name is Neil Suess, N-e-a-l S-u-e-s-s, I am the president and CEO of Loup River Public Power District in Columbus, Nebraska. And I'm also the current president of the Nebraska Power Association Board of Directors. The NPA represents all the electric utilities in the state of Nebraska. I'm here today to testify in opposition to LB1046. First, Loup Power District is a wholesale customer of NPPD under a long-term purchase power contract signed in 2016. Except for a small share of renewable wind energy, the district purchases all of our power from NPPD. In addition, Loup Power District is not affected by LB1046, as it is my understanding this bill would only apply to NPPD and OPPD as it is currently written. However, given the con-- construct of LB1046, I have some, I have some concerns over several provisions contained in the bill. These include the loss of local control in running electric utilities affected by LB1046. One of the founding principles of public power is the citizens of the utility have ownership of the utility and have control over the utility. This includes the ability to elect those that have the authority to run the utility, whether it is an independent board or a city council. If the citizens that elect those individuals to the governing body are unhappy with the utility, those citizens can remove them. Under LB1046, this would take away the voice of the citizen and put the majority control under the direction of one individual, the Governor. Having a diverse board of directors with the right variety of backgrounds is beneficial for public power systems. Each individual brings strengths to the table based upon their backgrounds, and having that diversity brings a variety of opinions and ideas to any discussions held. Having a board appointed by the Governor could affect the way long-term decisions and goals are set and established by the utility. When the Governor changes, a change in the direction within the board of directors could occur. Electric utility assets are long-lived, and changing goals and directions quickly could be problematic. The board of directors of an electric utility need to be able to adapt on the fly, but an ever-changing board of directors could create undue strain and expense on the utility and its customers. When the public power system was set up by Nebraska in the 1930s, it was based on the public having input to the governance of

the utilities. That system that was in place prior to this had independent boards hiring and appoint-- and appointing their own board of directors, not the public. It is my belief that Nebraska would be going backwards with LB1046. The same basic principle holds for the Governor appointing the chief executive officer. There is no assurance that this person would have the expertise required. In addition, what happens if that person does not perform to the standards set by the board of directors, but the Governor still wants to keep that person in place? As I stated at the beginning of my testimony, as I read it, Loup Power District is not impacted by this bill. However, if it passes as written, might come down to other power districts. In discussions with our board, they have a grave concern about going in this direction and removing the decision of the governing bod-- body away from the customer owners of the utility. I appreciate the opportunity to provide this testimony to the Natural Resources Subcommittee [SIC]. We'd be happy to answer any questions you may have.

MOSER: Questions?

J. CAVANAUGH: Thank you.

MOSER: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. What was your last name? I'm sorry, I didn't--

NEAL SUESS: Suess.

J. CAVANAUGH: Suess.

NEAL SUESS: Yeah, it looks like Seuss, but it's pronounced Suess.

J. CAVANAUGH: Well, thanks for being here, Mr. Suess. So is your board elected or appointed?

NEAL SUESS: Our board is all elected. We have a 10-member board that, beginning in 2023, will be a 9-member board due to the restructuring that we had to do because of the census data. But yeah, we will-- we are all elected by the individuals in our chartered area.

J. CAVANAUGH: And that board appoints the CEO?

NEAL SUESS: Yeah, they select the CEO. Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

J. CAVANAUGH: OK. And so one of your concerns is that if we were to adopt this as a logical idea, obviously the next step would be to apply it across the board to other elected boards that are similar?

NEAL SUESS: That is a concern that my board has.

J. CAVANAUGH: And your board, so it's elected by nine districts?

NEAL SUESS: Yes, we have, right now we have 10, but it's going to nine. Yeah, we have, we have nine specific districts of five-- or five of them which have specific-- outline certain townships and cities and towns. We have four subdivisions within the city of Columbus, which they all serve at large just because of the size of the city of Columbus. We do it like that way. But they serve specific subdivisions or subdivision number within the city of Columbus.

J. CAVANAUGH: Are any of those people subject matter experts?

NEAL SUESS: We have, we have had, we don't currently have a person who used to be an employee of NPPD. Depends on what you mean by subject matter. I mean, we have bankers who have financial background on our board of directors. We have a farmer on our board, director who has a background in agriculture. I have a car dealer and ownership, and much of them own businesses, which they would have background in how businesses run. Not just public power systems, but businesses outside the power systems. So although they may not have direct expertise in subject matter, matter expert, I would say they have subject matter expert in certain things that we do on a regular basis.

J. CAVANAUGH: So what you're saying, what I'm hearing is they might not be able to build a power plant with their hands and the hammer, but they might be able to understand how to finance the building of the power plant?

NEAL SUESS: Exactly.

J. CAVANAUGH: The things that, that are relevant and important to running the board.

NEAL SUESS: Exactly. And they would know who to talk to about doing issues like that.

J. CAVANAUGH: And are any of them afraid of asking questions?

NEAL SUESS: They have never been in the past.

J. CAVANAUGH: Thank you.

MOSER: Other questions? Senator Gragert.

GRAGERT: Thank you, Senator-- Chairman. Real, real quick, what's your background as-- you're the CEO?

NEAL SUESS: I'm the CEO.

GRAGERT: Do you have electrical background?

NEAL SUESS: I, I have a mechanical engineering degree from Iowa State University. I served for approximately 17 years as a consultant to public power systems and investor-owned utility systems throughout the United States. I have served for two-- prior to Loup Power District, two different electric utilities, one as the director of operations for the Oklahoma Municipal Power Authority in Edmond, Oklahoma; and one is the electric utility director for the city of Pella, Iowa. Again, in my time as a consulting engineer, I performed several duties for Loup Power District. They were a client of mine, and I learned the system inside and out from the previous utility director. So I've got plenty of experience in the electric utility industry.

GRAGERT: So the board members searched out a real good CEO.

NEAL SUESS: I believe they did.

GRAGERT: OK.

NEAL SUESS: Yeah, we had we had a, we had a number of, of, of individuals who did apply. Our board narrowed it down to eight at the time, and then they narrowed further down to four until I was selected.

GRAGERT: Thank you.

MOSER: Other questions? OK. Well, first of all, in the, in the area of disclosure, I have known Neal for 40 years.

NEAL SUESS: I think, I think it's pretty close to that.

MOSER: Yeah. And we're friends, and I also think he's got a higher career batting average on our softball team than I had.

NEAL SUESS: Just to let you know, Shelley told me I wasn't supposed to say anything about that so.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

MOSER: Who's told you not to?

NEAL SUESS: Shelley told me not to say anything about that.

MOSER: You also have a former state senator on your board.

NEAL SUESS: Yes, Senator.

MOSER: Former Senator Langemeier.

NEAL SUESS: Director Chris Langemeier is now on our board of directors also.

MOSER: Yeah. What-- how long have your direct-- how long-- well, start with directors. How long have your directors served? What's your longest-serving director?

NEAL SUESS: Well, our longest-serving director is Director Dick Tooley. Dick is a pharmacist in Columbus. He has been on our board since the early 1980s. Now he is not, he's not the longest serving board member that we've ever had. That, that distinction belonged to Lavern Kracl, who was a business owner in the city of Schuyler, who does Senator Langemeier took his place on our board. Director Krotzel was a board member for 48 years.

MOSER: And how about the CEOs? I can only think of three of them.

NEAL SUESS: There have-- well, I am the sixth president and CEO of Loup Power District. The one previous to me, Bob White--

MOSER: How long have you been?

NEAL SUESS: I have been the president and CEO since January 1st of 2006. So approximately--

MOSER: 15.

NEAL SUESS: Fifteen, 16 years. The CEO prior to me was Bob White. He was the CEO for approximately 18 or 19 years, but had been with the district prior to that. And then prior to Bob was a gentleman by the name Max Kiburz. Max was the president and CEO for approximately 12 or 13 years before that. But in our 85-plus years of existence, we've had six presidents and CEOs.

MOSER: OK, thank you. Appreciate your testimony.

NEAL SUESS: OK, thank you very much.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

MOSER: Welcome to Natural Resources.

MARY LEE MOULTON: Hi. Good afternoon, Senator Moser and members of the committee. My name is Mary Lee Moulton, M-a-r-y L-e-e M-o-u-l-t-o-n, I'm the co-president of the League of Women Voters of Nebraska, and I'm here today to speak for the League of LB1046. The League of Women Voters of Nebraska strongly opposes the bill introduced by Senator Bostelman. The bill requires Nebraska public power districts, whose charter territories represent more than half the counties of Nebraska or contain metropolitan class cities to divide their electoral districts into four subdivisions. It then allows the governor to appoint five that large members to the board. This will primarily affect Nebraska's two major public power districts, OPPD and NPPD. The bill would effectively give the Governor veto power, his directors veto power over directors elected by Nebraskans. The League would like to point out a discrepancy in the statement of intent for the bill. It reads, "Amends the make-up of the board of directors for certain public power districts to have half of the board appointed by the Governor and half elected." According to the bill, the Governor would be appointing five directors, while only four would be elected. NPPD and OPPD have served their customers well for more than 75 years, keeping energy reliable and affordable. Their directors are elected, ensuring accountability and transparency. Why would Nebraskans want to cede their power to elect their representatives to the public power boards to the Governor? There are several other issues we would urge the committee to consider regarding transparency and accountability. There is no provision in the bill outlining a public application process for the appointed positions. There is no public comment provision on potential candidates considered by the Governor. And who would the appointed directors be accountable, accountable to, customers or the gGovernor? LB1046 also allows the Governor to appoint a chief executive for the specified public power districts. Although the CEO would be employed by the district, they would serve at the pleasure of the Governor. Why should the ability to employ a CEO be stripped from the board of directors of a public power district? Again, who would the CEO be accountable to? Nebraska takes pride in the people being the second house. We urge the committee to continue to trust the voters of Nebraska to elect their public power boards and urge you to vote no on LB1046 and not advance the ball to General File. Thank you for your time and attention.

MOSER: Thank you for your testimony. Are there questions? Senator Cavanaugh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

J. CAVANAUGH: Thank you, Chairman Moser. And thank you, Ms. Moulton, for being here. And so you're aware, I assume, that OPPD used to be not on a district, electronic district level basis, right?

MARY LEE MOULTON: Uh-huh.

J. CAVANAUGH: Which changed--

MARY LEE MOULTON: At-large previously.

J. CAVANAUGH: Yeah, at-large districts. Do you recall if that was across the entire footprint or if there was an at-large district for Omaha and outside Omaha?

MARY LEE MOULTON: That I'm not certain of, but I can, I can try to check into it. Or one of the OPPD gentlemen might be able to help us with that.

J. CAVANAUGH: I'm a little shocked that's something that I don't know.

MARY LEE MOULTON: Uh-huh.

J. CAVANAUGH: Seems like something I would remember, but--

MARY LEE MOULTON: We were shocked that this was being heard here and not in the Government Committee, so there you go.

J. CAVANAUGH: So well, I don't know if you're from Omaha or not.

MARY LEE MOULTON: Uh-huh.

J. CAVANAUGH: But I remember when the district was elected at large and then when it changed to these district-level elections. And it seems to me, and maybe this is just my opinion, but it seems to me that once we went from the at-large elections to the district-level elections, the board itself became a lot more responsive to the desires of the community.

MARY LEE MOULTON: Well, I think that certainly when there are-- when there's a smaller number of people who the elected official is really responsible and accountable to, I think that, that they're more likely to, you know, to work with people in their own subdistrict. I think when it's a very large district, it makes accountability a little less, you know, a little less tenable.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

J. CAVANAUGH: Yeah. And so and this is my opinion, and you can tell me whether you agree or disagree, but that is a good thing in terms of a government entity, is this responsiveness?

MARY LEE MOULTON: Sure. That's why we have 49 senators instead of the whole state electing all 49 of you.

J. CAVANAUGH: And if we were to go-- just the portion, I know you addressed the part about the five and four.

MARY LEE MOULTON: Uh-huh.

J. CAVANAUGH: But if we were to go to the-- these four districts would be massive. I mean, they'd be probably on the scale of the board of regents or something like that.

MARY LEE MOULTON: Probably.

J. CAVANAUGH: And so my board of regents district is all of eastern Omaha, and then goes part of Sarpy County, or the one that I live in. And I certainly don't have as close of access to board of regents as I do to my OPPD board member who lives two blocks from me. So I guess it's just sort of a redundant question. But did that-- not only maybe somebody appointed takes them further away and the accountability is taken away, as you pointed out, in knowing who people answer to. But having these much-- going back to would be like a step backwards, right, in terms of less direct representation?

MARY LEE MOULTON: I think so too. And I think that, that the, the reasoning behind the concept, the worry about making sure that we have people who are are knowledgeable enough to be running for these public power districts does play into elections. I think that that a candidate who does have experience and can make that argument is going to be more likely to be elected to a public power board in today's day and age.

J. CAVANAUGH: And sorry, I keep-- thought of another question.

MARY LEE MOULTON: Sure.

J. CAVANAUGH: Sorry, Chairman-- Vice Chairman. Are you aware of any other boards that are kind of constructed in this sort of way where half are elected, half are appointed?

MARY LEE MOULTON: Not, I'm not aware of that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

J. CAVANAUGH: OK? Are you aware of any boards that have these requirements of expertise in this particular area for an elected board?

MARY LEE MOULTON: Well, to be specific, in the bill itself, the bill does not list any sort of expertise being required. It just said the Governor may appoint. It does not give an outline of any sort of, of, you know, considerations the Governor has to take into effect by statute.

J. CAVANAUGH: Thank you.

MOSER: Other questions? Thank you for testifying.

MARY LEE MOULTON: Thanks very much.

MOSER: If you're planning to testify, please come toward the front, so we're able to move the testifiers through more quickly. Greetings.

AL DAVIS: Back again, Senator Moser, members of the committee. My name is Al Davis, A-l D-a-v-i-s, and I'm here today as the registered lobbyist for the 3,000 members of the Nebraska chapter of the Sierra Club and an opposition to LB1046. The proposals in LB1046 would dramatically change the operation and philosophy of our public power districts, which have served the state well for decades. The elected boards of the public power districts steered us through tumultuous times on many occasions, focused on reliable and dependable energy delivered at very low rates. For decades, Nebraska's power costs were among the nation's lowest, and that sterling performance continues today. The mechanics of the bill are draconian and have multiple bad effects on Nebraskans. In NPPD's portion of Nebraska, the reduction in elected board members from 11 to 4 means that each district will need to triple in geographic size. The action makes it virtually impossible for board members to connect easily with constituents. OPPD's geographic picture isn't as significant an overhaul, but it will double the number of constituents per board member. More outrageous is the attempt in this bill to undermine the elected board members by giving the Governor the right to appoint five board members who would also be able-- to always be able to outvote the elected members when speaking with the Governor's voice. And it seems certain that it would be the Governor's words which would guide the power districts, not those of the elected and educated members whose knowledge is focused on the industry rather than governing. Essentially, the four elected board members would become window dressing dolled up to give the appearance that public power still existed. The appointed positions

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

become political plums to dole out to the Governor's friends, who may have little or no interest in the industry. Finally, the bill employs-- empowers the Governor to appoint the CEO at the pleasure of the Governor. There are no guidelines in the bill as to what qualifications that person should have, and the same can be said for the five Governor-appointed board members. The CEO of an enterprise like our power districts should never serve at the pleasure of the Governor. He or she could become-- becomes just another battle under the control of the administrative state. No governor in the United States has that kind of political power, and no governor should ever have that kind of political power. LB1046 is an attempt to ignore the voice of Nebraskans, is undemocratic and authoritarian. The author of the bill underestimates the intelligence of Nebraska's voting citizens. Ironically, that complaint of government overreach often used by conservative legislators against big government is exactly what this bill embodies. The bill should be killed immediately. Thank you, senators.

MOSER: Thank you. Questions? Senator Groene.

GROENE: Thank you. How are you, Al?

AL DAVIS: Good. How are you?

GROENE: Did, did you say nowhere in the United States does a governor have the ability to do that?

AL DAVIS: I don't think the governor appoints a powerful CEO and a bunch of board members to a public power district.

GROENE: Well, but we're the only one with a public power district.

AL DAVIS: Well.

GROENE: Oh, all right. Well, I guess your statement was correct. Anyway, thank you.

MOSER: Other questions? Are you done, Senator?

GROENE: Yeah, I'm done.

MOSER: OK, thank you. You were thinking hard, there, I could tell.

GROENE: I'm thinking about the next guy.

MOSER: Yeah. [LAUGHTER]

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

GROENE: Kick him out.

MOSER: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. And thank you for being here, Mr. Davis. I'm getting reprimanded, of course, for always-- I'm too casual, I guess. I lean back.

MOSER: Too soft spoken.

J. CAVANAUGH: Too soft-spoken. I get that complaint. Thank you for being here, Mr. Davis. I would kind of give you the same question. I know you're a political observer for a while. The OPPD board was previously at an at-large basis, and then we went to these districts that we currently have. Would you agree that the representation, I know you're not from Omaha, but I know you're an observer, has become more, more representative as a result of having the district-level elections?

AL DAVIS: Absolutely. I think that any district that's established, no matter what field you're in, you're going to pay attention to the needs of your constituents in that district. There's the one-- they're the people that elected you. And if you go to an at-large system, you know, especially let's just take Nebraska if the Legislature was an at-large piece, it would be completely-- much more dominated by urban interest than it is today.

J. CAVANAUGH: I hadn't thought of that, but that's a fair point. And in terms of, you used some force-- more forceful language than I probably would about the nature of the top-down administration of government. But if the Governor were to be able to choose more than half of the boards and to appoint the entity, that would essentially make the policies of the Omaha Public Power District an issue in a governor's race because the elected Governor would have the sole authority to make those determinations, and the elections of those four districts would become much less significant. And they may ultimately become, as you said, kind of window dressing. Is that--

AL DAVIS: I do feel that way. Yes.

J. CAVANAUGH: Would-- well, and you made a reference to undermining the intelligence of people of the state of Nebraska. Is there any examples or suggestions that you can think of that would maybe elucidate like why-- how we could get people who have these subject matter expertise involved? Or is that something that should just be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

entirely left up to the voters to elect in their district the people that are available to them?

AL DAVIS: So I think there's-- I understand Senator Bostelman's concerns that, that people aren't informed and educated. I think that the-- just by the demonstration of the quality of the work that the public power districts have done in the state of Nebraska, I think they've demonstrated that the people that are on those boards are educated and are working to the-- to solve the problems that their, their citizens are focused on. So I don't think that's a problem. Because I also, I think the power districts educate their board members rather quickly. You know, it's a big-- it's essentially the first couple of weeks you're in the Legislature, you're at sea, you don't know what's going on. But you get your sea legs under you fairly quickly, once you have the training.

J. CAVANAUGH: It's, that's a relative assessment. But well, so the one concerned about is Senator Bostelman did articulate that I don't necessarily have a disagreement with, and I remember this from the days when OPPD was the at-large board, that there was concern that the board was more or less just a rubber stamp for the, the administration. I think I've heard that complaint less since we've gone to district-level elections, but I think that, that is a merit to the argument that we need people who understand the subject matter of how-- and Mr. Suess, did I say that right-- correctly, I think said that engineering and the technical sciences are not the only thing we're talking about in this field. But I guess I would ask, do you think that there is some value in ensuring that people come in or have an outlet to become educated? That is not the people they're meant to be supervising, because that is ultimately the role of the board, right, is to supervise the, the administration, including the CEO. And if their source, the ones educating them, are the ones that are supervising, that can lead to a problem. Right?

AL DAVIS: It can lead to a problem. I'm going to make reference to something else. I hear that same complaint a lot of times about school boards.

J. CAVANAUGH: Uh-huh.

AL DAVIS: But the superintendent of schools dictates what the school board is doing. I have never-- I've seen the superintendents make mistakes and boards go along. Not very often. Usually, the board, there's someone on the board that is smart enough to figure out what's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

going on. So I think that is a concern that I-- it's a possibility. I don't think it's going to be happen often.

J. CAVANAUGH: So potentially a legitimate concern, but not exclusive to this board. And therefore--

AL DAVIS: Absolutely not.

J. CAVANAUGH: --the logic would extend to every board on every level.

AL DAVIS: Absolutely not. But if, you know, if that's the concern, then and this bill were to pass, then the guidelines all need to be put in the bill as to who, as to who serves.

J. CAVANAUGH: Thank you.

MOSER: Other questions for the testifier? Thank you.

AL DAVIS: Thank you.

MOSER: More opponents. Welcome to Natural Resources.

JAVIER FERNANDEZ: Thank you, Mr. Moser. Good afternoon, members of the committee. My name is Javier Fernandez, that is J-a-v-i-e-r F-e-r-n-a-n-d-e-z, and I am the president and CEO of the Omaha Public Power District, OPPD. I am testifying on behalf of OPPD in opposition to bill LB1046. Let me begin by saying that public power has served the state extremely well for nearly a century. And I am sure that many in this room and those who are listening online would agree. Our rates are amongst the lowest in the country, which has attracted large investments for some of the country's largest companies. As you heard before in the previous bill, we are among the most reliable utilities in the nation, and we are continually investing in our systems to make them even more resilient. Our history and track record does not warrant the governance changes on LB1046. First and foremost, this bill is an enormous erosion of local control. One of the key principles at the foundation of the public power model that Nebraska is so proud of. Under LB1046, those board members elected by OPPD customer-owners would always be in the minority, and five appointed members would always have a control of board decisions. Now there is no accountability for appointing board members other than to the sitting Governor, and customer-owners must pay for the decisions of such a board without any ability to hold the appointed board members accountable. A future board majority appointed by the Governor with an appointed CEO could steer the utility's investments away from those that are needed to those that are more politically expedient. You

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

know, as a C-- as a former CFO, I can tell you that it LB1046 could also adversely affect the borrowing costs of OPPD, which has low borrowing costs due to the high ratings of our tactics and bonds. Bond rating agencies and investors carefully scrutinize the governance of public power entities. They need the assurance of the governing boards will do the right things to maintain the financial viability of the entity, including raising rates when necessary. There's further confusion on LB1046 as it relates to the role of the CEO. The bill states that the CEO serves at the pleasure of the Governor, but it also states that the CEO conducts the business of the district subject to the direction of the board. Who would the CEO respond to? We've talked about this at length. Lastly, let me reiterate again that this bill presents a monumental change to the public power district business model. It was introduced and given an expedited hearing, allowing little to no time for the public to review its ramifications. If the legislative-- if the Legislature believes our model is not serving customer-owners, then potential changes should be studied and input should be obtained from customer-owners who ultimately bear the costs of such changes. I want to thank you for considering my testimony. OPPD respectfully urges this committee to indefinitely postpone LB1046. I am happy to answer any questions you may have.

MOSER: Questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. I got to get my Omaha questions asked. Thank you, Mr. Fernandez. OK, so I know you're relatively new. You've been on the job a year?

JAVIER FERNANDEZ: Seven months.

J. CAVANAUGH: Seven months. OK, well, thank you for taking up the task--

JAVIER FERNANDEZ: On my current role.

J. CAVANAUGH: --at OPPD.

JAVIER FERNANDEZ: Correct.

J. CAVANAUGH: As CEO.

JAVIER FERNANDEZ: Correct.

J. CAVANAUGH: Right, OK. So in terms of the makeup of the OPPD board, my first question is, are there any of these engineers, people who've worked in the power industry before on the board currently?

JAVIER FERNANDEZ: We have a few engineers. We have people with a lot of experience, we have, we have members of the-- proud members of the military. We have educators, we have engineers. Again, we've had business owners.

J. CAVANAUGH: Who sit on the board?

JAVIER FERNANDEZ: Who, who sit on the board currently and others who have sat on our board in the past.

J. CAVANAUGH: And in terms of the districts, I pulled it up on my phone here and looked, there, there's a large number of the districts currently take up most of the city of Omaha. And then there's one that looks like it's outside the city of Omaha, Douglas County and then northern parts, you know, Washington County and Dodge County, maybe. And then one that is, there's Bellevue and, and then maybe one that's outside of Sarpy County all the way down to the state line. Does that sound about right?

JAVIER FERNANDEZ: Correct.

J. CAVANAUGH: The individuals who represent those two kind of outside of the urban core districts, do you know where they're from?

JAVIER FERNANDEZ: They live in those districts. So one of them lives in Ashland, and the other one lives in Cass County. So they--

J. CAVANAUGH: In Cass County. So both of those would probably qualify under the definition set forward in this bill of being 30 miles outside of--

JAVIER FERNANDEZ: Our headquarters.

J. CAVANAUGH: Outside of the city. I can't fight it right now, but so I guess my question is that under the, this bill-- that would, well, under current situation, two people on the board represent those communities, the less densely populated portions of, of the footprint. Under this bill, you're only guaranteed one person that has to be outside of that footprint. So there is the potentiality that if we were to adopt this, there would actually less representation for people that are outside of those urban cores.

JAVIER FERNANDEZ: That is correct, and this is something-- that, this is a topic that we discuss with our board, equal representation between urban and rural communities. And that's one of the beauties of public power. That's one of the reasons why it was created in

Nebraska, is making sure that, that we are serving all of our customers equally, including rural districts. And having those two board members on our board today serves a purpose.

J. CAVANAUGH: Thank you for that answer. And so you heard me kind of ask about-- to ask Mr. Davis, just previously, it's kind of that capture issue of people coming in who are elected, duly elected by the citizens and who don't necessarily have the expertise on the subject. Do you guys have an onboarding process that kind of helps people understand, get their feet under them in this industry?

JAVIER FERNANDEZ: Absolutely. We have a very robust onboarding process where we get new, new board members, it takes some time to, to share information. We have existing board members who have been on the board for many years and who benefit also from, from continuous education. The electric utility industry continuously evolves. So it's important for not only the board members, but for staff and all of us to continue to get continuous education.

J. CAVANAUGH: Is part of that onboarding process-- is there any information that comes from outside of the administration, by which I mean, that people get an education that hasn't come directly from the OPPD itself?

JAVIER FERNANDEZ: Oh, absolutely. Very intentionally. We have, of course, our subject matter expertise in the district. We're very proud of that and we share a lot of that with our board members. But our board members routinely attend conferences with the American Public Power Association and many other associations outside to gather more information, perspective, make sure that they come prepared to the table and we have a balanced conversation. And so that happens regularly.

J. CAVANAUGH: Get impartial information about how to operate a public power utility.

JAVIER FERNANDEZ: That is correct.

J. CAVANAUGH: Thank you.

MOSER: OK, other questions? Senator Hughes.

HUGHES: Thank you, Mr. Fernandez, for coming. So you mentioned you have engineers on your board. Is that correct? Are they from the power industry or do they have other disciplines?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

JAVIER FERNANDEZ: From the energy industry, yes.

HUGHES: They are, they are-- their background is in the energy industry?

JAVIER FERNANDEZ: Yes.

HUGHES: OK, very good.

MOSER: OK, other questions? Thank you for your testimony. Thanks for sitting through a long hearing.

JAVIER FERNANDEZ: My pleasure. Thank you very much.

MOSER: More opponents, if there are some. Welcome.

TOM KENT: Thank you, welcome. Thank you, Vice Chair Moser, members of the Natural Resources Committee. My name is Tom Kent, T-o-m K-e-n-t, I'm the president and CEO of Nebraska Public Power District. I have over 30 years experience in the electric utility industry. I've also had the privilege to serve on several boards, including serving the past two years as the chair of the Midwest Reliability Organization Board of Directors. I also want to point out that my employment will not be impacted by LB1046, as I'm currently under an employment contract with the district. I'm speaking today in opposition of LB1046 on behalf of NPPD. I'd like to commend Senator Bostelman for bringing forward the bill to allow us to have a robust discussion on governance of public power districts. While well-intentioned, I believe that the changes proposed by LB1046 impact the ongoing success and mission of public power in the state. Since the passing of the Public Power District Enabling Act in 1933, one of the key tenets of public power has been local control through elected representatives of the public we serve and the governance of our organization. NPPD serves a diverse customer base, and as a result, we have a diverse board. That diversity makes us stronger as an organization. Diversity in thought and experience helps our board arrive at good decisions that are in the best interest of our customers we serve. Specifically, as you look at our performance over the last several years, you see consistently stable and affordable rates and high reliability. The U.S. News and World Report ranked Nebraska is number three for power grid reliability in 2019. NPPD hasn't raised our wholesale rates in five years and are retail rates in nine years. In fact, our average cents per kilowatt hour sold at wholesale has decreased approximately 12 percent from 2017 to 2021, and our average cents per kilowatt hours sold at retail has decreased approximately 14 percent during that same

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

timeframe. These results are due in part to the oversight and support of the board in ensuring NPPD maintains a diverse, cost-effective and reliable resource mix, manages risk effectively and makes prudent investment decisions. Establishing a board where a majority of the members are political appointees reduces the voice of the customers we serve and reduces our customers' opportunity to hold the board accountable. In effect, the board becomes more of a political body that would be susceptible to influenced by any agenda other than current Governor and less of a corporate body focused on carrying out its fiduciary duties to ensure the efficient and economic operation of the district. In addition to exercising its fiduciary duties to ensure efficient and economic operation and setting rates in a fair, reasonable and nondiscriminatory manner, the most important function of the board is to hire and, when necessary, fire the district's CEO. I've been on both sides of the table and I was-- when I was part of hiring the current MRO CEO while serving on that board and being hired as the CEO of NPPD by our board. The clear alignment and accountability between the board and the CEO is critical to the successful function of an organization. Creating a situation where the CEO serves at the pleasure of the Governor but takes direction from the board is a recipe for confusion and conflict, does not represent good governance, and would impede the successful function of the organization. Thank you again for the opportunity to testify. And thank you, Senator Bostelman, for bringing this discussion up so we could have this discussion today. I'd be happy to answer any questions you might have.

MOSER: Questions? Senator Groene.

GROENE: How long you been in NPPD system?

TOM KENT: The NPPD CEO?

GROENE: Yeah, have you bought-- were you with them before and got promoted or--

TOM KENT: Yes. I've been with NPPD for 31 years and I was selected the CEO and started in this position May 1st of 2020. So almost two years in this role.

GROENE: Who preceded you?

TOM KENT: Pat Pope.

GROENE: That's the name I was looking for. Have you noticed any changes in the board's activity? Has it become more political? Has

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

it-- present board, has it become more directive towards you to do what-- you know, most setups in corporations and stuff is boards just, just hires you and then you manage it. Have you been seeing a more pol-- political tint that they're telling you what to do?

TOM KENT: No, no. Our board actually functions very well as a, as a, as a governance organization. We have 11 board members. Five of those board members come with a background that they've had exposure to public power. We have one that used to be an operations manager for one of our rural customers. One used to be a general manager for one of our rural customers. Director Schrock, who's in the room here today, used to be sitting on this committee when--

GROENE: So--

TOM KENT: --he was a state senator. One works in the industry and another one was on the board of one of our rural customers.

GROENE: And you have how many, nine?

TOM KENT: Eleven.

GROENE: Eleven. So who-- was it management that brought forward to the board zero carbon by 2050 or did, was that an initiative of the board?

TOM KENT: So the strategic directives, and that's one of the functions of a board, is to set the strategic direction for organizations, to provide the governance, to provide the oversight. In the case of public power district boards in Nebraska to ensure fair, reasonable and nondiscriminatory rates, they're also the rate-making body in the state, which is different than a lot of other states. The board has 12 or 13 strategic directives, and the one that has to do with carbon reduction is one of those strategic directives. That's a process where we've worked hand in hand management, our board and our customers over the last couple of years to determine and to develop what that strategic directive should say. The board approved that policy in December of this year, and the policy that was approved reflects the input from management, reflects my input directly, also reflects feedback that we heard from our customers through the process.

GROENE: Thank you.

MOSER: Other questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. I don't need to ask you-- he's gonna, you're going to keep reprimanding me for this.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

MOSER: No, I just got a text from somebody that was listening online and they were having troubles hearing some of the testimony. So I apologize for picking on you, but--

J. CAVANAUGH: No, no. You're fine.

MOSER: --you're such a nice guy.

J. CAVANAUGH: I apologize for needing to be reprimanded continually to speak into the microphone. But I don't need to belabor, I just wanted to give you the opportunity. A lot of my questions would be duplicative to you, and probably the answers. But if there's anything that I asked of CEO Fernandez that maybe you have a different answer to or you think that if you were-- you remember my questions.

TOM KENT: So yeah, I'll go back to one of the comments you made. And just to flesh out the rest of our board, we have 11 board members. Our district covers most of the rural portions of the state, so it won't be a problem for us to elect or have more than one board member from a rural area. We, we are primarily there already. We have a board member that's been on our board since 1992. That'd be our longest-serving board member. And we have board members that, that are in their second year on the board. We have a range of millennials to Baby Boomers, a cross-section of, of women and men, farmers, lawyers, business people. So again, the public has done a good job for 89 years of electing the peop-- the people they want to represent them. And the public we serve as a diverse public. You made the comment when Javier was up about the board's role as supervising. That really isn't the role of a board in a, in a corporation. The role of a board in a corporation is to set strategy, to provide oversight, make decisions on, on certain things. There are certain things they have to do statutorily because of Nebraska statutes in terms of approving purchases and those kinds of things. And hire and fire the CEO, and the CEO is who they hold accountable for the successful function of the district and the management of the district.

J. CAVANAUGH: Well, thank you for that clarification. And as far as Senator Groene's questions about that setting those policy initiatives, do you have any reason to believe that the policy decisions and, and initiatives that have been prioritized by your board are not a reflection of the people who elected them?

TOM KENT: No, I don't have any reason to believe that they're not a reflection of the people that elected them.

J. CAVANAUGH: And so it's safe to assume that or maybe, maybe not. But the boards are currently being elected board represent the intentions of the people who elect them, and an appointed board would not do that.

TOM KENT: It's possible it would not do that, right? Because the-- in the current structure of public power, that local control and that ability for the people that are served by public power to elect their representatives, to sit on the board and make those decisions on their behalf, there's that clear link of accountability. And we, we see it carried out in practice every day and every month in our boardrooms. Now we have a diverse customer base. We have a diverse board. And I can tell you for sure that there will be some customers that we serve that don't like some of our policies, including the carbon policy. I can tell you for sure there will be some customers that we serve that don't think our policy goes far enough. The role of the board and the role of management working with our customers is to find the middle ground that allows us to best serve our-- all of our customers.

J. CAVANAUGH: Thank you.

MOSER: OK, so how about CEO turnover at NPPD? What-- how long do they typically serve?

TOM KENT: You're going to, you're going to test my memory.

MOSER: Well, I'm not asking for-- it's not like--

TOM KENT: So I would say in recent history, they've typically served in the five-year range, with the exception of Mr. Pope, who was nine years. I'm in my second year. Prior to Mr. Pope was--

MOSER: Mabin.

TOM KENT: Ron Asche.

MOSER: Ron Asche.

TOM KENT: And Bill Furman. And then before that was Bill Mabin. And before that was Bob Gangel. And now you're really testing my memory.

MOSER: Well, that's-- I'm just, for background information. And are the backgrounds of the CEOs technical or are some of them accountants? One of them was a banker.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

TOM KENT: Yes. So I'm an engineer by training. I have an electrical engineer-- an electrical engineering degree from the University of Nebraska-Lincoln, I have an MBA from the University of Nebraska as well. Pat, my predecessor, MBA electrical engineer. Ron Asche, finance accountant. Bill Furman, engineer. Bob Gangel, finance, an accountant. Bill Mabin, engineer. Bill Mabin came from the consulting world, worked, worked with public power organizations as a consultant for decades across the country.

MOSER: So some of those terms were more than six years, some were less?

TOM KENT: Yeah. So like Pat was nine years. I'm in my second year. I would say on average five years, give or take.

MOSER: I hope you make six.

TOM KENT: I'm hoping to make 10. But again, that's up to the board [LAUGHTER]. So I've got high expectations.

MOSER: Well, that's, that's excellent. Has the board ever canned a CEO. Or is this not public information?

TOM KENT: Yeah, I don't think I could-- usually what happens, and I can, I'll talk from my experiences being on boards of other organizations. Usually what happens when there's a difference of opinion and direction between the board and CEO is they find a way to, to separate and--

MOSER: Amicably.

TOM KENT: --try and make it as amicable as possible. Right?

MOSER: OK. All right.

TOM KENT: And I've, I've been involved in that in other boards that I've been on.

MOSER: So there is accountability.

TOM KENT: Yeah, most definitely. There's accountability.

MOSER: The board ever call in the CEO and say, hey, we don't like this?

TOM KENT: Uh-huh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

MOSEER: They give you a negative input sometimes?

TOM KENT: Yes. They give me positive input, too, thankfully.

MOSEER: Well, everybody loves positive input. How we react to negative input is--

TOM KENT: Right.

MOSEER: --what sometimes really makes a difference. Other questions? I get negative input once in a while, too. OK, thank you very much.

TOM KENT: Thank you.

MOSEER: Anybody else to testify against the bill?

NEAL NIEDFELDT: Good afternoon, Senator Moser.

MOSEER: Welcome.

NEAL NIEDFELDT: And good afternoon to the rest of the committee. My name is Neil Niedfeldt, I'm president and CEO of the Southern Public Power District. We serve 27,000 customers in the seven-county service area of Merrick, Hamilton, Hall, Adams, Kearney, Franklin and Phelps Counties. Our corporate office is in Grand Island. Our district purchases 100 percent of our wholesale power from the rest of our district under a long-term power purchase agreement. We've been doing that for many years. The Southern Power District opposes LB1046 as it is currently written, which would restructure the board of directors for NPPD and remove the responsibility for hiring and firing their CEO. While we believe the concept of improving the expertise and qualifications of members of the NPPD Board of Directors is in the best interests of the public and our ratepayers, having the public elect just four members of the board and having the remaining five members of the board appointed by the Governor remove public from Nebraska's public power model and replaces local control with political appointees. Governor appointments may or may not be based on expertise, most certainly will have a political preference, depending on which party the Governor is affiliated with. The same could be said for the provisions in this bill that would move the selection of the CEO from the NPPD board to the Governor. As an alternative, we and our Southern board and I, we've, we've reviewed this, tried to come up with a different solution that we can offer. I'm going to speak more towards our relationship with NPPD and NPPD's makeup. NPPD has roughly 70 wholesale customers beyond their retail customers. A little over half of their revenues come out of their wholesale contracts. So we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

would suggest if you want to stay with the LB1046 in some fashion, we suggest that the four members of the board that is in LB1046 to be elected by the public remain, but we would replace the five political appointees with a requirement that those five board seats would need to be publicly elected, but selected from the boards and councils of NPPD's 70 wholesale customers. Like Southern, wholesale customers have a tremendous stake in the affairs of NPPD, due to the impact they have on the success of each of us as also customers, both for revenues [INAUDIBLE] endpoints. Amending LB1046 in this matter retains local control by our ratepayers, brings to the board the customer served by NPPD through the local municipal or public power district utility. We would also return the responsibility to select or remove the CEO back to the NPPD board. So for those issues and concerns the Southern Power District opposes LB1046. And I will answer any questions you might have.

MOSER: For the transcribers' benefit, would you please spell your first and last name?

NEAL NIEDFELDT: I'm sorry. Neal, N-e-a-l, Niedfeldt, N-i-e-d-f-e-l-d-t.

MOSER: Thank you. OK. Questions for the testifier. You got off easily. Thank you.

NEAL NIEDFELDT: Good, thank you.

MOSER: Next opponent, please.

CATHARINE CARNE: Good afternoon, thank you for this opportunity and to each for your work as senators to make Nebraska's good life even better. My name is Catharine Carne, I was born and raised in Nebraska. My family has included farmers, brave men who have served in our military, small business owners and wonderful stay-at-home mothers who get their kids to church on Sunday. Before returning to Nebraska, I worked in the Structured Finance Group, a large accounting firm, for more than a decade. I often view problems through the lens of business and what's, what's most economic for all impacted. Today, I'm here to oppose LB1046. Public power, a more than 75-year institution put in place by the Legislature, I believe, has benefited Nebraska greatly. It has benefited those of us outside of cities by sharing transmission and generation costs more broadly. It has attracted business with low rates and Nebraska's friendly work-together mindset to our state. Senator Groene, I looked at public power utilities controlled by governors, and I only found two OPPD's size or larger, the first being

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

Puerto Rico Electric Power Authority. I believe it's widely known that that utility is a complete disaster, and sadly, 3,000 people lost their lives as a result of Hurricane Maria. Many are still living with blue tarps in constant power outages from this 2017 storm, and we don't want a situation like this here. The second was Long Island Power Authority, which seems to bear additional costs due to political intervention. A recent Moody's credit report for this utility, which rates them three steps lower than OPPD already says, quote, To the extent that problems surrounding electric service restorations in a timely manner recur, it could result in negative rating ramifications, especially if it results in political intervention, end quote. This is just like your personal credit score. It's-- if it's bad, you pay more in interest for a mortgage or car loan. Board appointments and the CEO being able to be replaced at the pleasure of the Governor is political intervention and will lower our utilities' credit ratings, which will cost Nebraskans millions of dollars a year in interest. Even just half a percentage increase from 4 to 4.5 percent, I calculate would cost ratepayers \$18 million every single year. So a vote for this is going to cost Nebraskans much more money, and this is just one of the unforeseen consequences of this bill. I've heard no good reason, and no one testified for a good reason that the Governor should appoint the board and CEOs. The current local control is similar to our school boards and natural resource districts and really represents a government of the people, by the people and for the people. I hope that you all oppose this bill.

MOSER: Thank you. Would you please spell your name, first and last?

CATHARINE CARNE: Yes. Catharine, C-a-t-h-a-r-i-n-e, Carne, C-a-r-n-e.

MOSER: Thank you. Questions for the testifier? OK, seeing none, thank you for your testimony.

CATHARINE CARNE: All right. Thank you, senators.

MOSER: Sure. You're welcome. Next opponent. We've got a bad trend started here, so please spell your first and last name.

KATHERINE FINNEGAN: No worries. My name is Katherine Finnegan, K-a-t-h-e-r-i-n-e F-i-n-n-e-g-a-n. Thank you for allowing me to submit for the record my statement opposing LB1046. Mine-- I am a resident of District 20 in Omaha. Our public power district across our state is uniquely Nebraska. We are the only state in the country that is powered solely by public power. For over 75 years, Nebraskans have elected their public power utility board representative for their

district. In addition, the CEOs are employed at the will of the people through their elected representatives. This has ensured healthy engagement by the owners stakeholders in each of the respective communities, as well as good stewardship by the board members themselves. While LB1046 presents a number of concerns, I would like to just focus on one: Nebraska public power. districts are not broken, so why does the state believe they need to be fixed? With the mandate to maintain low rates and reliability, Nebraska's public power districts excel. On rates, according to the Energy Information Association's average retail price of electricity to ultimate consumers by end user report, across all sectors, which include industrial, commercial, transportation and residential, Nebraska pays an average of 8.97 cents per kilowatt hour versus the national average-- sorry about that-- versus the national average of 10.59 cents per kilowatt hour. This rate is approximately 15 percent less per kilowatt hour than the national average. I would argue that the efficiency with which our public power districts have been run has put more money in Nebraskans' pockets to spend as they wish right here in the state of Nebraska. On reliability, Nebraska receives high marks by benchmarks provided by recognized industry indexes such as the System Average Interruption Duration Index or SAIDI, and the Average Service Availability Index. And the last full report that I was able to find, but I know some others have quoted the U.S. News and World Report, but in the last average Service Availability Index report that I found which was dated 11/20, so it doesn't include some instances, the average total annual electric power interruption duration per customer, the U.S. averaged 284 minutes lost of power. While Nebraska was one of the lowest states, second only to Washington, D.C., with just under 90 minutes. As a stakeholder of OPPD, I am proud to report they have for the last 14 years maintained reliability greater than 99.8 percent, as measured by the average service availability index. Lastly, collectively, Nebraska's public power districts employ over 4,000 people, and I could be corrected, but that's kind of where my math landed me. If anyone wants to chime in, please--

MOSER: Your red light is on.

KATHERINE FINNEGAN: Oh, sorry. OK, so I just feel like it's-- it is a work culture that's rich in tradition and pride, an important part of the fabric of what makes Nebraska great. I thank you for listening to my testimony in opposition, and I hope you vote against LB1046.

MOSER: OK, questions for the testifier? Senator Hughes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

HUGHES: Yes. Thank you for coming in today. So your comment about Nebraska's reliability being, you know, tops in the nation and our power cost being among the cheapest? Would you have any reason-- any idea why our power costs are that cheap? Would it be because we are very close to Wyoming coal fields and--

KATHERINE FINNEGAN: Well--

HUGHES: --Gerald Gentleman Station out at Sutherland is one of the most efficient coal plants in the state, providing a huge chunk of our electricity across the state?

KATHERINE FINNEGAN: I, I, I'm not here to comment on--

HUGHES: OK, very good. Thank you.

KATHERINE FINNEGAN: --what the OPPD and NPPD, how they choose their resource mix at this time. I'm just here to look at the structure of the governance.

MOSER: That's a fair comment. Other questions? Thank you very much for your testimony.

KATHERINE FINNEGAN: Thank you.

MOSER: Other opponents? How many more people plan to testify? If you could raise your hand. One, two, three? OK, thank you. Please go ahead.

JOHN HANSEN: Mr. Vice Chairman, members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union, we're the second-oldest, second-largest general farm organization in the state. We are a statewide organization. We are known as the builder of co-ops. We have built by our calculation about 445 co-ops across the state of Nebraska. That's the next organization. Didn't get to a dozen. So we do know something about building co-ops. And so if you think about public power, public power is a kind of publicly owned cooperative. Its principles are very similar. Its control mechanisms are similar. And so our organization does know something about the business of building co-ops. I have helped build about a dozen myself. And so as I've done work in helping other folks with co-op development, and as you are a part of the cooperative movement as we are, you understand why it is that co-ops-- what it takes to build a co-op. And you also understand why co-ops fail. And so of all the things that it's important for a co-op to have, it is a clear

understanding on the part of the owners of the co-op that they are in fact the owners of the co-op, and that they step up to the plate and accept their responsibilities as owners of that system in order to look like, act like, participate like owners of the system instead of just customers. That's what we call affinity. And so when a co-op loses its affinity, it's a death sentence. And so when the folks who own the co-op think of themselves only as customers and not as the owners, that co-op is a dead man walking. It will fail over time because the owners of the system failed to step up. So we are strongly opposed to this bill because this substitutes the ownership component. It takes the public out of public power and it substitutes voter control for an appointment system that has not worked well anywhere else that I've ever seen it work. There is no substitute for voter control. There is no substitute for folks having control over their own destiny. We are blessed with our public power system. It is not broken, it works extremely well by any way that you want to measure it. And if we're going to play the same standards that I have been suggested for why-- how it is that you get to be a part of this appointment process or to serve on the board, I would just point out that the, that the, that that standard is not used in any of the other things that we use, including election to the Nebraska Legislature. You do not have to be a lawyer to be a part of the Legislature.

MOSER: OK, thank you. Questions? Thank you for your testimony.

JOHN HANSEN: I am getting off extremely cheap today.

MOSER: Yes. You must have made sense, nobody asked you a question. Or at least we understand your position, I should say it that way.

JOHN HANSEN: Or I'm hopeless.

MOSER: Other opponents? Here, some-- are there some here to testify in the neutral?

SHELLEY SAHLING-ZART: Good afternoon, Vice Chairman Moser, members of the Natural Resources Committee. For the record, my name is Shelley, S-h-e-l-l-e-y, Sahling-Zart, S-a-h-l-i-n-g-Z-a-r-t, I am vice president and general counsel of Lincoln Electric System, the municipal electric utility here in Lincoln, Nebraska. And I wasn't planning to testify, but Lincoln was referred to a couple of times and there have been some statements about accountability of appointed boards. And as has been noted, Lincoln Electric System has an appointed board. But there's a little bit more about that you need to know. I think they're incredibly accounted-- I think they're subject

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

to great accountability. They are appointed, they're appointed by the mayor, they're confirmed-- who's elected. They're confirmed by an elected seven-member city council. The city of Lincoln, the voters of Lincoln in 1970 adopted this structure with the appointed board and the way it is comprised today. It's been that way for over 50 years. In the, in the ordinance that governs Lincoln Electric System, the Lincoln Electric System board is given pretty broad jurisdiction over the personnel and facilities and operations of LES, but the city council in the ordinance reserved for itself final authority over budget rates and any long-term financings. So there's great accountability. So when we do our budget, we do a public hearing and our board approve it and makes a recommendation, it goes to the city council, they have a public hearing and they vote on it. So we've got kind of two levels of transparency. Now why do we do that? Part of it is because we're a municipal electric utility. We are part of the city of Lincoln, which is different than a public power district. And this structure allowed these nine members of our board to be very focused on the electric operations. They spend a lot of time with us. We spend a lot of time educating them. City council members, they have jurisdiction over a whole bunch of things and it's hard. As your general counsel was on our city council, she can tell you it's hard to focus on all of those things. So it was concentrated in this board, but the board has accountability directly back to the city council. A couple more things. Our board is term-limited. They can serve three three-year terms and they received no compensation. There's a lot of other things I'd like to talk about. I can tell you about the composition of the board, I can tell you a lot of other things, but I think they do have great accountability. But as a municipal electric board, they're different than a public power district. Other city utilities are governed by their city council. This one was set up with the semi-autonomous board.

MOSER: Questions? So they serve three-year terms?

SHELLEY SAHLING-ZART: Three three-year, they can serve up to three three-year terms.

MOSER: And are the seats staggered so that they're elected in different years?

SHELLEY SAHLING-ZART: Yes. Three come up for appointment or reappointment every year.

MOSER: And how many do you have total, six?

SHELLEY SAHLING-ZART: Nine.

MOSER: Nine. So every three years it could turn over?

SHELLEY SAHLING-ZART: Yes.

MOSER: OK, other questions? Thank you very much for your testimony. Thanks for hanging around so late.

SHELLEY SAHLING-ZART: You're welcome.

MOSER: You know, since you were referenced, I'm glad to know how your system works. I think that's good that you were able to help us with that. Other opponents.

ED SCHROCK: Good afternoon. My name is Ed Schrock, you spell that E-d S-c-h-r-o-c-k. I want to tell you a little about myself. I'm a farmer from Phelps County, Nebraska. I farm with two sons, two brothers and a nephew. On January-- on December 28, 1990, Governor Kay Orr appointed me to the Legislature. I did 14 years in the Legislature, and my first two years I represented District 39. But they moved that district to Omaha, so I did not have a district to run in. So I sat out two years and then ran again and served District 38 for three years. The reason the seat was open was because Bill Barrett was elected to Congress and there was two years left on board. So I know what it's like to be appointed by the Governor, even though Ben Nelson was sworn in five days later. I love the Unicameral. I love, and I appreciate what you do. I love the Nebraska Public Power Board and the management. We have a great CEO in Tom Kent. We get great counsel from John McClure, who I've known for many years. But I do want to tell you a little bit about my last election. I've been in six elections, one, one was unopposed. I didn't have any trouble with the other four. But this last election, I was assassinated. They came at me with both barrels. They spent, we believe, over \$30,000. I collected \$350 in contributions for my campaign. They do it by telling you what a poor organization NPPD is, and their electric rates are too high. And it's a corrupt organization, the board members are corrupt. They sent a postcard with a picture of me in front of a jet airplane, saying I'm flying around on the ratepayers money, and that's why their rates are too high. We don't own a jet airplane. You know that. Yes, I've flown on the company airplane a few times. It's a prop airplane. They went door to door and, even in my case, they were telling people I was a Democrat, which is kind of a bad word in rural Nebraska in some areas. I'm sorry, I have a lot of democratic friends, so don't take that personal. It was very frustrating. I went door to door. My grandson

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

helped me, and some of his kids did, and I kind of gave up. I thought I'd lost the race, but I did squeak through. It was interesting. Eight counties, I won six of them that I represented in the Legislature. The two that I hadn't represented in the Legislature, I lost. I won my own county by 70, 70 percent. My opponent lost his county and his neighbor said he didn't even know what board he was running for. He didn't campaign. He stayed home. They were paying people to go door to door. I think they went to most doors twice. It was, it was very discouraging. But I didn't like was all the lies and the deception, and deceptions they were talking about. They characterized NPPD as a very poor organization. Now, the red light is on, can I speak a little longer?

MOSER: Why don't you let some of us ask you questions and we'll give you a chance to--

ED SCHROCK: All right.

MOSER: --fill in. Senator Groene.

GROENE: Yes, thank you, Vice Chair.

MOSER: Oh, excuse me, Senator. I might have said opponent, and you are testifying neutral, correct?

ED SCHROCK: Yes, I'm a maverick today.

MOSER: OK.

ED SCHROCK: I do support generally--

MOSER: No, that's fine.

ED SCHROCK: I generally support what NPPD is--

MOSER: But I misspoke. We want to correct that for the record.

ED SCHROCK: All right.

MOSER: OK. So go ahead, Senator.

GROENE: Did green energy come into your race at all as a, as part of the race?

ED SCHROCK: Not necessarily so. No. But you know, you and I know that if you take away the subsidies, coal is the cheapest form of electricity we have and--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

GROENE: So this opponent [INAUDIBLE]--

ED SCHROCK: And nuclear is very reliable.

GROENE: --who-- do you know who they were?

ED SCHROCK: No.

GROENE: The 35, who were they?

ED SCHROCK: They were-- it was basically the League of Conservation Voters. There was other entities involved.

GROENE: So the green energy.

ED SCHROCK: But the money came directly from Washington, D.C., from liberal PACs.

GROENE: All right.

ED SCHROCK: And, and they've been doing it now for three election cycles.

GROENE: I understand that.

ED SCHROCK: And they've been pretty successful.

GROENE: Yes. So should we make the board partisan so that they come out of the closet and actually be Democrats?

ED SCHROCK: I don't know. They said my opponent was a Republican, but, but that's not what the neighbors said. He said he's a Republican because he couldn't get anywhere being a Democrat in this, this in rural America. I think Senator Bostelman has a good idea here, probably goes too far. I think there's room for a couple, two or three board members to be appointed by the Governor on the board. Probably shouldn't have control over the CEO.

GROENE: Make it flop, but there's more elected than appointee.

ED SCHROCK: Yeah.

GROENE: Yes.

ED SCHROCK: My son serves on the corn board. It's totally appointed by the Governor, it runs very well.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

GROENE: So have you seen more partisanship on the board in the last couple of elections?

ED SCHROCK: You know, they kind of fly under the radar. You know, do you know who represents you on the community college? Do you know who represents you on the state school board? We kind of fly underneath the radar. And if you're assassinated in the last two weeks with a barrage of negative campaigning, it's hard to overcome that. I barely survived. I just got 52 percent of the vote.

GROENE: What did you think of this? I got sent this letter that your chair, Mary Harding, sent the Nebraska-- the Democratic Party as a fundraiser. As chair of the Nebraska Public Power District Board of Directors, I was proud to vote Thursday with my other colleagues to approve a goal to achieve net zero carbon emissions. That means more clean energy. The vote would have never happened without the leadership of Democrats on a nonpartisan board working to build bridges with Republicans who respect the role of coal. That is why we keep electing Democrats across the state and up and down the ballot, including to your local and state public power. Signed Mary Harding, chair of the NPD Board of Directors.

ED SCHROCK: OK.

GROENE: Are we getting some partisanship in this board?

ED SCHROCK: You know, Mary has been a friend of mine for 25 years.

GROENE: That's fine.

ED SCHROCK: She used to be the executive director--

GROENE: I got friends that are Democrats too.

ED SCHROCK: --of the Environmental Trust Board when I was chairing this committee-- I chaired this committee for eight years, for what it's worth. That probably won't happen again because of term limits. But Mary made a mistake, and I think she would acknowledge that. And because of that, she did not run for, for reelection to be the chairman of the year. I don't think she understood that that would be so publicized. But she made a mistake, and I think she would have acknowledged that, it's too bad.

GROENE: So if she wouldn't have been publicized, it would have been OK? Because they're working under the radar, the Democratic Party with

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

Jane Kleb [PHONETIC], Kleeb or whatever has been recruiting candidates--

ED SCHROCK: Yep.

GROENE: --green candidates.

ED SCHROCK: Yep.

GROENE: Spending tons of money--

ED SCHROCK: I think they're the ones--

GROENE: --and, and claiming it's a nonpartisan race.

ED SCHROCK: Well, there's the-- they probably the ones that put politicized it, because in the geographic area we serve, I'm sorry the Democrats don't really run too well. Just look at the number of state senators you have from outstate Nebraska that are rich Democrats.

GROENE: I understand that. So should we make the--

ED SCHROCK: And, you know--

GROENE: Should we make the race partisan?

ED SCHROCK: And some of my best friends were Democrats that I served with in the Legislature, and we overlooked that a lot. You know, we just-- we did what we thought was right for the state, and I think you're doing the same thing.

GROENE: John and I are good friends.

ED SCHROCK: I hope you are.

GROENE: Anyway, I symp--

ED SCHROCK: This is, this is a great place. I mean, it was a-- it was a good experience, something I never thought would happen.

GROENE: I sympathize with you because after the fliers that were sent out against me. And my wife, about the tenth one, she said, if I had knew you had this kind of character, I'd have never married you.

ED SCHROCK: I'm in a little trouble. I'm an old farmer, I'm an old farmer--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

GROENE: I understand and sympathize with you with the fliers they sent out.

ED SCHROCK: You know, I'm an old farmer who sat in a noisy tractor too long. Just for the record, I'm up for reelection in, in 2024. I'm not going to run again because I'll be 81 years old. I don't see myself going to Columbus once a month, 80 years old. And we did pass a resolution saying that we wanted to be carbon-free by 2050. I thought it was silly. There's two of us that voted against it, one was me. I mean, how can we tell the board what they should be doing 28 years from now? I hope, I hope this climate change thing can be solved. I hope we can burn, use less fossil fuels. But let's be realistic, even if the United States became fossil-free, now you've got China burning seven times as much coal as we do, and they don't seem to stop. And Brazil is still tearing up rainforest. So what are you going to do about it?

MOSER: OK, go ahead. You got another question? Go ahead.

GROENE: Do you believe that the purpose of the board is to just make sure that we have reliable? In the past, it was-- when I looked at somebody running for one of those boards--

ED SCHROCK: And if we can--

GROENE: --Dawson Public Power, I looked at somebody-- I didn't look at party, environmental policy. I looked at who was going to make sure I had electricity and it was low cost.

ED SCHROCK: Yeah.

GROENE: Has that changed, it seems like, on what-- who's running for off-- for boards?

ED SCHROCK: Yeah. Luckily, these board members pretty much follow management recommendations. They are not sheep, because they're engaged. But let me say this about the February event. Coal did very well, nuclear did very well. Natural gas was unreliable. Couldn't get it. If you could get it, it was terribly expensive. And during the peak time in February, when things were going south, we were getting 1 to 2 percent of our power from renewables. I'm not against renewables, I think it's great. It fits the system, but maybe we're overdoing it and ought to look someplace else. I don't know. The sun doesn't shine at night and the wind doesn't blow in the summertime when my irrigation wells are running. I'm sorry.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

GROENE: Thank you. That, I wish you would consider--

MOSER: Senator Hughes.

GROENE: --running again.

MOSER: Senator Hughes.

HUGHES: Yes, thank you, Senator Schrock, for coming in. I've been patiently waiting for someone who is not being paid by the electric industry to talk about the outside money coming in to influence your board seats. Washington D.C. money, you already said it for me, but in your years on the NPPD board, have you seen a fairly rapid change in philosophy of the board members in the last two or three election cycles--

ED SCHROCK: A little bit.

HUGHES: --toward the green energy?

ED SCHROCK: --and the sad part about it is we have a lot of customers that are skeptical about us, about where we're going, and it's because of this. It's because of this element. I'm going to make sure that my successor is not supported by the lowlife that runs these organizations that finance these campaigns. I'm sorry, how can you live with yourself when you lie and misrepresent what's going on?

HUGHES: Well, I appreciate you coming and allowing the light to be shown on what is actually going on.

ED SCHROCK: Well, I think we know what's going on.

HUGHES: Well, I do.

ED SCHROCK: And it's, it's a sad state of affairs.

HUGHES: Yes. Thank you for your service. Thank you for coming in.

ED SCHROCK: I'm just glad I survived. But I'm going to ride off into the sunset in three years, guys.

MOSER: Any questions? Further questions? Thank you very much, Senator.

ED SCHROCK: Thank you, Senator Bostelman. It's a good idea. I hope you can incorporate some of it.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

MOSER: Thank you very much. Is there anybody else that's going to testify after this testifier?

DARIN BLOOMQUIST: I'm the testifier you're looking for, the last one.

MOSER: Yeah, we're going to enjoy your testimony.

DARIN BLOOMQUIST: I think you will.

MOSER: Welcome to Natural Resources.

DARIN BLOOMQUIST: Yes. Vice Chairman Moser and members of the committee, my name is Darin Bloomquist, D-a-r-i-n B-l-o-o-m-q-u-i-s-t. I am the general manager of Nebraska Electric Transmission Cooperative Inc. NEG&T serves 150,000 rural customers and in aggregate, is NPPD's largest wholesale customer. I'm here to testify today in the neutral position for LB1046. I want to thank Senator Bostelman for introducing this bill. This is an important discussion that we need to have and LB1046 is a great starting point. It generally appears that public power district member board elections are venturing into un-- unforeseen territory. Time has come to call the election-- public election process to the light and scrutinize these election tactics for truly electing those with Nebraska's best interest in mind. Unfortunately, money speaks and we are seeing new directors elected by well-funded PACs that do not have the best interest of Nebraskans in mind. Rather, they parrot the message and objectives of their out-of-state benefactors. We have seen a dramatic change in the makeup of the largest power district board so strongly influenced by these out-of-state-- influenced by these out-of-state interests. Nebraskan public power systems have a long history of managing our generation and resources to benefit Nebraskans, consumers by providing reliable, cost-effective, and environmentally responsible energy. We are, we are seeing policy changes that purport to be green solutions, but will prior-- will prove to be costly and unsustainable in the long term. I bring these concerns to your attention at the potential peril to my organization because we insist on bringing what's going on in public power district director races to your attention. We are being attacked. We-- in fact, bills have been introduced that would effectively legislate us out of existence. Regardless of these attacks, my organization, a Nebraska nonprofit corporation for promoting billions and billions of dollars in commerce and agriculture since 1956, will continue to speak out on behalf of Nebraska ratepayers. Last year, it was LB482, which was killed in the Government Committee, and this year, it's three more: LB1134, LB1139, and LB1185. You have heard my well-respected peers talk about loss of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

local control as being a crucial tenant of public power and I agree with them. However, tell me how having hundreds of thousands of dollars pouring into public power district director races that have come from campaign professionals disseminating unabashed lies and distortions to an under-informed electorate isn't already loss of local control and unrecognizable to the forefathers of public power. Again, big money speaks. It is nearly impossible to compete with the deep pockets of these out-of-state interests. My-- NEG&T and its members are solution oriented. Many of my member managers and directors would welcome the opportunity to collaborate with Senator Bostelman to provide industry input, expertise, and a review of LB1046 to create an effective process to address the real concern, which would change our position from neutral to a potential supportive position. Thank you for your attention and the opportunity to speak here today.

MOSER: Questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice chairman Moser, and thank you for being here, Mr. Bloomquist. So-- well, I guess I'll start where you kind of finished up, was the bills that you feel were introduced to attack your organization. I introduced a bill that you referenced, LB482, and admittedly, I'd never heard of your organization before I introduced that bill. So that was a bill that said government money couldn't be spent in campaigns.

DARIN BLOOMQUIST: I agree with that.

J. CAVANAUGH: And you came and testified against it saying it was a direct attack on your organization, which was--

DARIN BLOOMQUIST: I, I--

J. CAVANAUGH: --the first time I'd ever met or heard of you. So I guess my question is if it's a direct attack on you-- so you-- are you spending government money on these campaigns?

DARIN BLOOMQUIST: No, sir. My organization is a private corporation. We do not have any public funds.

J. CAVANAUGH: OK, so how was that bill a direct attack on your organization?

DARIN BLOOMQUIST: Because it called into question some of the things that we do as a, as a private corporation. We-- it was implied.

J. CAVANAUGH: And I don't need to relitigate LB482 at this point, I-- and it was not an implication because it was explicitly the bill said you cannot spend government money on campaigns. I guess I don't-- I'm curious how that was an attack on your organization.

DARIN BLOOMQUIST: Well, you remember Frank Daley testified in opposition of that bill too. Accountability and Disclosure didn't like that bill either.

J. CAVANAUGH: Well, and Frank had a different reason, right? But-- and then during that testimony, I recall Senator Hunt asked you about a, a amount of money that your organization had transferred to another organization. Do you remember that line of questioning?

DARIN BLOOMQUIST: I believe so, yes.

J. CAVANAUGH: And you said that-- I think at one point, you said it was that that money was a loan and that it had been repaid. And then when she asked you to give proof that it had been repaid, you said you'd have to check and see if it had been repaid.

DARIN BLOOMQUIST: No, I don't-- that's not how I recall it.

J. CAVANAUGH: Let's see. OK, is there a plan to get the \$700-- \$7,500 loan repaid? I would have to talk to my board about that. And yes, actually, we are in discussions about that. OK, thank you.

DARIN BLOOMQUIST: We were in discussions about that.

J. CAVANAUGH: OK, so my question is has that loan been repaid?

DARIN BLOOMQUIST: No, sir.

J. CAVANAUGH: OK, why not?

DARIN BLOOMQUIST: Doesn't-- not a need to.

J. CAVANAUGH: So when you told Senator Hunt that it had been repaid and that it was going to be repaid, that was--

DARIN BLOOMQUIST: We were in discussions talking about that.

J. CAVANAUGH: OK. So this is not the reason for this discussion, but--

DARIN BLOOMQUIST: Exactly.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

J. CAVANAUGH: You brought it up and-- but ultimately, your position here today has to do-- is rooted in the fact that you do not care for the outcomes of democratic elections.

DARIN BLOOMQUIST: That's not true at all, sir.

J. CAVANAUGH: Is that not what you just said? I can-- I'll have the transcript pulled later to, to hear what you just said.

DARIN BLOOMQUIST: No, I don't remember saying anything about disregarding public democratic process.

J. CAVANAUGH: You said that the money that comes in from out-of-state organizations that you disagree with is corrupting the democratic process.

DARIN BLOOMQUIST: I didn't use that-- those words.

J. CAVANAUGH: OK.

DARIN BLOOMQUIST: I could reread it if you want me to.

J. CAVANAUGH: Well, that's fine. You can do that on somebody else's time. But so you would like to make the board-- you would be in favor of appointing members of the power board under a different construction than this current construction?

DARIN BLOOMQUIST: I would be in favor of discussing potential scenarios.

J. CAVANAUGH: OK and you had said that you-- there are certain members that are taking the board in a direction you don't care for.

DARIN BLOOMQUIST: I believe potentially there are forces out there that are financing, putting people in the place to do that.

J. CAVANAUGH: And so is-- would it be a misrepresentation of your position to say you have-- your organization has spent money on elections and has not been happy with some of the outcomes?

DARIN BLOOMQUIST: We have not spent money on elections.

J. CAVANAUGH: OK.

DARIN BLOOMQUIST: My organization has not.

J. CAVANAUGH: You-- the NEG&T has not.

DARIN BLOOMQUIST: That's correct, sir.

J. CAVANAUGH: OK. Are you part of any organization that spent money in elections then?

DARIN BLOOMQUIST: I am an assistant treasurer of a PAC.

J. CAVANAUGH: OK, does NEG&T put any money into that PAC?

DARIN BLOOMQUIST: We made a loan to that PAC in 19-- excuse me, in 2019, a nonelection year.

J. CAVANAUGH: And is that the \$7,500--

DARIN BLOOMQUIST: That's correct.

J. CAVANAUGH: -- I asked you about? And that loan does not need to be repaid.

DARIN BLOOMQUIST: That's correct.

J. CAVANAUGH: So--

DARIN BLOOMQUIST: I have an Attorney General's Opinion.

J. CAVANAUGH: OK. And so your position is you have not put any money into the-- to this PAC that has participated in these elections. However, you have given a loan that will never be repaid.

DARIN BLOOMQUIST: I didn't-- I-- no one said never repaid.

J. CAVANAUGH: OK, that does not need to be repaid.

DARIN BLOOMQUIST: It doesn't have to be repaid as I understand it.

J. CAVANAUGH: OK.

DARIN BLOOMQUIST: It can be.

J. CAVANAUGH: So-- but you-- so you are perfectly happy with the structure and the-- of the makeup of the Nebraska Public Power Board right now?

DARIN BLOOMQUIST: Am I perfectly happy with the makeup-- in what-- what mean-- what do you mean? Do I like every one of the directors?

J. CAVANAUGH: Sure, whatever.

DARIN BLOOMQUIST: I, I, I like a lot of them.

J. CAVANAUGH: OK.

DARIN BLOOMQUIST: Yeah, I will tell you that.

J. CAVANAUGH: Are there--

DARIN BLOOMQUIST: I consider them friends.

J. CAVANAUGH: But there are some that you don't care for.

DARIN BLOOMQUIST: There are some--

J. CAVANAUGH: Not on a personal level, but on the political-- their positions.

DARIN BLOOMQUIST: There, there are some that I agree with more than others.

J. CAVANAUGH: OK. And the organization on-- the PAC on which you said that has spent money in these elections, has it spent money in the election for Mr. Schrock? Did you spend money on that election?

DARIN BLOOMQUIST: No, sir.

J. CAVANAUGH: And the election for the individual that Senator Groene was referencing, did you spend any money in that election? I don't remember what her name was--

GROENE: No, she's already on the record.

J. CAVANAUGH: --the previous president of the board?

DARIN BLOOMQUIST: Mary Harding?

J. CAVANAUGH: Mary Harding.

DARIN BLOOMQUIST: We do not spend any money on that election.

J. CAVANAUGH: OK, did you spend any money--

DARIN BLOOMQUIST: On--

J. CAVANAUGH: --on elections--

DARIN BLOOMQUIST: --on, on-- we did not spend-- I'd have to check that, but I believe the candidate that ran against her received several donations from the Republican Party.

J. CAVANAUGH: OK.

DARIN BLOOMQUIST: But I don't believe-- I'd, I'd have to recheck, but I do not believe we're--

MOSER: Senator, Senator--

J. CAVANAUGH: Sorry, I'm--

MOSER: You're questioning the witness. Let's, let's let the witness testify and then you can talk to him.

J. CAVANAUGH: All right.

MOSER: Research your information and--

J. CAVANAUGH: Thank you for your answers.

MOSER: --we'll talk about it later.

DARIN BLOOMQUIST: You're welcome. Anytime.

MOSER: OK. Yes, Senator Groene.

GROENE: Thank you. Yeah, I got a lecture when I was a freshman, Senator Wayne. This is your time. This is your time to testify and we're supposed to just ask you questions, but I get into lectures too, so I'm not going to criticize John too far. But so how much total money did your PAC have?

DARIN BLOOMQUIST: How much total in, in the last--

GROENE: Yeah because you've helped--

DARIN BLOOMQUIST: --election cycle?

GROENE: I'm assuming you focus on public power elections.

DARIN BLOOMQUIST: Exclusively.

GROENE: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

DARIN BLOOMQUIST: Yes, I believe so. I believe somewhere around-- I haven't looked lately, somewhere around \$50,000.

GROENE: So \$30,000 out-state-- out-of-nation was spent on one race. Do you know how much was spent "conglomerately" on all those-- Oma-- OPPD and, and NPPD races--

DARIN BLOOMQUIST: I can--

GROENE: --from out-of-state money?

DARIN BLOOMQUIST: I can tell you this is all on Nebraska Accountability and Disclosure website. In the last cycle, there were three candidates that took over \$218,000.

GROENE: Out of state?

DARIN BLOOMQUIST: Absolutely.

GROENE: And your money comes from where?

DARIN BLOOMQUIST: From in-state, from Nebraska.

GROENE: From Nebraskans.

DARIN BLOOMQUIST: That's correct.

GROENE: And you're the bad guy?

_____: Let it go.

DARIN BLOOMQUIST: Well, I, I didn't say that.

GROENE: But anyway. Well, we thought you-- heard you were. But anyway, so we have a problem where-- I think the Democratic candidate for Governor calls it dark money. And I'm not criticizing her because that's one of our issues. But this is dark money coming in from PACs outside of the state who we don't know who they are-- some-- we know their organizations, but don't know where the money comes from to them. So what is your answer?

DARIN BLOOMQUIST: To?

GROENE: To make this Nebraska's elections again.

DARIN BLOOMQUIST: Well, I think I think--

GROENE: Nonpartisan.

DARIN BLOOMQUIST: I, I think you're going into campaign finance reform ultimately and that's a very heavy lift. I don't disagree with what Mr. Neidfeldt said, where if we do have an appointment, it would make sense to me that the appointments would come from the-- at the wholesale customers of NPPD. My organization supplies \$240 million annually to NPPD. It-- we're the largest customer and we have effectively no voice. We have, we have elected directors that make these decisions. Now we can talk to them and reason with them and we do, we do--

GROENE: Have you--

DARIN BLOOMQUIST: --but I would sure love to have a little more skin in the game, and so would my members, by having a vote on that board too if we're going to dedicate this kind of funds to them every year.

GROENE: So have you seen any money coming in further down the ballot on local power districts or have they got that far yet?

DARIN BLOOMQUIST: It hasn't got that far yet, but as, as Senator Cavanaugh might remember, I gave the committee-- this is a report from Resistance Labs, is actually a dossier about public power districts in Nebraska, has my membership in there. They list by director whether they think they should be reelected or not or opposed.

GROENE: What organization is that?

DARIN BLOOMQUIST: Resistive Labs [SIC]. It's called the Climate Utility Transition 2020 Opportunities Report. This is the latest one we got. I'll give you a copy if you'd like--

GROENE: Well, I'm-- you'd have to ask the Chairman, but I think it'd be nice to get copies.

DARIN BLOOMQUIST: It, it targets public power districts and by name.

GROENE: Thank you.

MOSER: Gentlemen. I think we've gone as far as I'm going to let you go as far as testifying. You can discuss this out in the hallway here when we're done, but we should restrict our comments to the bill that we've got here. OK. Any other questions? Thank you very much for your testimony.

DARIN BLOOMQUIST: Thank you, Senator.

MOSER: Yes, anybody else wants to testify neutral or are we done? Great, thank you. Senator Bostelman, you want to close? Welcome back. Did you stay awake through all that?

BOSTELMAN: Thank you, everybody, for coming and testifying. Really, it's-- that's what this was about, is trying to find some different ideas, some different things and find out what people are thinking about public power and their boards. I want to make a few comments to some specific thing. Washington state appoints their CEO to public power, the governor does. Of 56-- 56 percent of all public power utilities are managed by the city council, the county, the board of directors, like what I believe LES has done. So 56 percent of public power utilities are managed that way. Perhaps there's something in that when we look at what Southern Public Power talked about, that might fall within that 56 percent. Thirty percent of all public power board memberships are appointed in the-- in the United States. So this isn't a completely out-of-the-box concept or idea. It's worth a discussion. It's worth the topic of the discussion we had today. I do want to talk about the board members, and I want to make sure it's plenty clear, because I want to correct the record. NPPD, the board members, I'm not going to say their names, but I will tell you their positions according to their resumes, what they have on the website. There's, there's a person who comes out of the utility business, there's a public power board director, there's a-- retired, I believe, broadcasting, rental property, rancher, another public power district person, a WellCare person, a farmer, a lawyer, a farmer, and a solar energy. So there's four out of those of NPPD that have direct connection with generation. On OPD, there's a mechanical engineer, an energy efficiency, LEED-- buildings, how you make your, your, your building more efficient. There's a nurse, there's a law enforcement officer or a retired law enforcement person, there's a-- there's a business manager, there's a member of the NRD board member, there's a mechanical engineer that has a PE in heating and air conditioning, there's a lawyer and there's a teacher. There's zero people on OPPD board that has experience in power and generation. So I think that's my point that I'm trying to make with this bill, and the things that I have discussed over and over is that the need for-- and I think what you've heard from some individuals here, there's a need-- what's happened in the past? We're changing significantly. What's happened in the past happened in the past. I'm talking about going ahead, the future. Things are changing and there are huge challenges ahead. That's my point. Do we need to have a different way of putting people with that working knowledge, that skillset, get those people on those

boards so we have a portion of those members on the board that can provide that technical, I'll call it, information. I don't care how much training you have. Senator Hughes, you're a farmer, right? So if I come out to your farm and I'm from the city, I have no background in farming. If I come out and you show me around your farm and tell me about your farming, am I going to have the same knowledge of work the way you do? I agree. And that's what I'm talking about. You know, I think it's, I think it's evident that we need that. I think NERC says that, SPP says that. The challenges are huge as we look to the future. How are we going to start to address that now? It's not uncommon for appointments to be made. There are ways to do it where it comes underneath a, an elected official, as in LES was talking about. There are ways to do that. Thirty percent of all public utilities in the United States are appointed, have appointed members. Washington state appoints, a governor appoints the CEO. Fifty-four percent of the utilities fall underneath that city council board of directors governance of some type of an elected official. That's where the discussion is. That's the point that I'm trying to make with this, and and I hope that we can continue to have the dialogue on this and, and, and look to ways to improve upon what we do. And one thing about large districts, I think Senator Brewer probably would have comment as to how a large-- how you deal with a large district, but that's just on the side. Anyway, thank you for your time, board members, I really appreciate it-- committee members. Thank you for everybody that come in and testify today, and I'll take any other questions you may have.

MOSER: Anybody have any questions? Senator Groene.

GROENE: I'm going to stand myself corrected. But Nebraska is the only state that has a 100 percent public power, is that not correct.

BOSTELMAN: There's other states that are really close. They're not 100 percent. They may be 90. I think maybe, I think Tennessee maybe one or some other-- Tennessee Valley Authority, some other ones. There are some out there that their-- that do have public power. A major portion within the state, but it's not the entire state.

GROENE: And when you say municipalities, there's a lot of communities across the nation that have their own public power, the community itself, like Fremont does and here, you've got Lincoln. But, but overall, they're free enterprise operating power in every state but Nebraska. I believe our law, doesn't it say that you can't even-- if you free enterprise, you can't even operate here. Is that not true? So anyway, I just wanted to clarify when I said-- did you say 30 percent of all are appointed boards or how many of the-- have you, did you

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

find any public power that was hired, the administrator was hired by the, by the board?

BOSTELMAN: Off the public, off the website publicpower.org, it says that 30 percent of all public utilities boards are appointed.

GROENE: But you don't know about the CEO.

BOSTELMAN: Sorry?

GROENE: You don't know about the CEO.

BOSTELMAN: The CEO, I know Washington state for sure.

GROENE: Is by the governor?

BOSTELMAN: Yes.

GROENE: Thank you.

BOSTELMAN: Welcome.

MOSER: Further questions? Thank you, Senator. I'll relinquish-- yes, ma'am?

KATIE BOHLMeyer: Position letters.

MOSER: Oh, OK. I think I already said there were 89, right? I read that earlier, 89 opponents that we received letters from. What's that? Yes, that will close to the hearing. And I would relinquish, relinquish control back to Senator Bostelman.

BOSTELMAN: OK, if we could please clear the room, we have another hearing, please. If we could please clear the room. If we could please clear the room. Please clear the room. Please clear the room, we have another hearing. Please clear the room. Those who are for LB736, please stay. Everyone else, please-- we'll let them get out the door before we--

SEAN FLOWERDAY: No worries. This is going to be pretty short, I think.

BOSTELMAN: All right. So we're now ready to have our opening on LB736, so please go ahead.

SEAN FLOWERDAY: We'll keep this as short and sweet as we can. Good-- well, really evening Chairman Bostelman and members of the Natural Resources Committee. My name is Sean Flowerday. That's S-e-a-n

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

F-l-o-w-e-r-d-a-y. I'm a member of Senator Bostar's staff and I'm here today on his behalf. Senator Bostar apologizes he couldn't be here. He had an unavoidable conflict. I'm here to present LB736, a bill that redefines the term "E-85" to mean a blend of ethanol and gasoline in which ethanol comprises at least 85 percent or more of the blend by volume. Our office introduced this piece of legislation to begin a conversation about ethanol or-- about ethanol, how the blends by volume are regulated, and how they are presented to the public at large. If you were to ask the average Nebraskan what percentage of ethanol was contained by volume in E-85 fuel, they would likely tell you 85 percent, but current Nebraska statute only stipulates that the blend must contain at least 70 percent ethanol by volume. Additionally, federal regulations, which supersede state statute and make our own rules largely irrelevant, mandate compliance with the American Society for Testing and Material Standards, which allow for as low as 51 percent ethanol by volume. This begs the question why does the state of Nebraska regulate ethanol blend percentages at all if federal requirements are-- or will overrule state regulations? It's also important to appreciate that the products sold to consumers changes ethanol blend percentage based on the season in order to assure better performance. Depending on the time of year, E-85 fuel contains different quantities of ethanol anywhere from 51 percent blend by volume during the coldest months of the year to as much as 83 in the hottest months due. To federal regulations requiring the inclusion of denaturings, even in the peak of summer, E-85 fuel never actually reaches 85 percent by volume, according to industry experts from Renewable Fuels Nebraska that we've conferred with in our office. And I think they're here to speak on this as well. Ultimately, the decision that the Nebraska Legislature makes regarding this piece of legislation won't likely have an impact on what is sold at the pump because federal rules still supersede anything we are likely to do in this area. But it's our hope, in the interest of greater transparency for the consumer, to begin a conversation about why we sell a product called E-85 that never actually reaches 85 percent ethanol by volume when it goes into fuel tanks at the gas station. Additionally, should Nebraska statute even attempt to regulate ethanol blends in light of federal standards that supersede our own? We're eager to hear the ideas that stakeholders have about the situation, welcome input from the industry about how we can best serve and best communicate with Nebraska consumers. Thank you for your time and I'd be happy to answer any questions the committee might have.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

BOSTELMAN: Thank you, Mr. Flowerday. My-- typically we don't ask-- I'm-- for me-- I know Senator Moser did the other day, but we'll ask does anybody have any questions?

SEAN FLOWERDAY: Sorry.

BOSTELMAN: Thank you--

SEAN FLOWERDAY: Yep.

BOSTELMAN: --appreciate it. Do we have any proponents for LB736? Any proponents? Seeing none, anyone that would like to testify in opposition to LB736? Good evening.

DAWN CALDWELL: I could avoid this and let you all leave for the day, but I'm going to go on the record. Good evening, Chairman Bostelman and committee members. My name is Dawn Caldwell, D-a-w-n C-a-l-d-w-e-l-l. I'm the executive director at Renewable Fuels Nebraska, the statewide trade association for the ethanol industry. We are a resource to encourage public policy that ensures that growth and expansion of the renewable fuels industry in our state. Our 24 ethanol plants can produce 2.6 million-- billion gallons of ethanol annually, second in production only to Iowa. We are proud that Nebraska's ethanol industry contributes some \$5 billion to the annual state economy. We appreciate Senator Bostar's concern for consumer transparency, but we cannot support LB736 for the reasons that he stated in his opening remarks. The American Society for Testing and Materials, or ASTM International, is a globally recognized leader in developing and delivering voluntary consensus standards. Today, over 12,000 ASTM standards are used worldwide to improve product quality, enhance health and safety, strengthen market access and trade, and build consumer confidence. ASTM code D5798 drives the federal E-85 specification for flex fuel vehicles, a range from 50-- 51 to 83 percent by volume, as he stated. Indeed, our current specification in section 5.1 clearly states that a fuel comprised of 85 percent ethanol by volume cannot legally be sold in the U.S. So in layman's terms, which I greatly prefer as he talked about average consumer or typical consumer, this wide variance in the percentage of ethanol is necessary for proper vehicle performance. For instance, a lower ethanol blend of 51 percent ensures that vehicles properly start in winter, while also maintaining ethanol as the predominant chemical in the fuel. The upper limit of 83 percent includes the minimum 2 percent denaturant so the fuel would not be considered an alcoholic beverage. We sincerely appreciate Senator Bostar's eagerness to sell more ethanol via a more significant percentage, but due to the reasons stated, we must go on

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

record as opposing the bill and we look forward to further conversation regarding the points he brought up. Thank you and I'm happy to answer your questions.

BOSTELMAN: Thank you, Ms. Caldwell. Do we have any questions from committee? Seeing none, thank you for your testimony. Anyone else who would like to testify in opposition to LB736? Seeing none, anyone in the neutral capacity? Good evening.

REID WAGNER: Good evening. That's right, not afternoon anymore. Good evening, the department-- or the Natural Resources Committee. My name is Reid Wagner, spelled R-e-i-d W-a-g-n-e-r, and I'm the administrator of the Nebraska Ethanol Board. I come here today representing the Nebraska Ethanol Board and I do thank you for this opportunity. This is my first hearing, so having a good time. It's great. The proposed change to the definition of E-85 from a 70 percent by volume and higher to 85 percent by volume and higher blend of ethanol with gasoline presents a legal and technical dilemma, but also calls inherently for alignment between state and federal definitions. It is for this reason that I come before the committee today in neutrality of LB736. The current federal specification of E-85 fuel is comprised of, as we've heard already, a 51 percent to 83 percent by volume gasoline blend range. And we've already called out the ASTM standard required to actually-- or that is setting that specific range and the reasons for it. So just one more time, that lower limit of 51 percent is so that our flex fuel engines will actually start in the wintertime, especially during these very frigid months. As we make walks around Nebraska, we all feel that very-- it's very real. And the top end is the 83 percent just set there with the 2 percent denaturant requirement. As Dawn noted as well, this is a avoidance of the beverage tax and you don't want it-- that fuel ethanol being sold as a beverage, as it would potentially be not up to food-grade quality standards for human consumption. I would also like to point out for transparency on the consumers' sake, this is actually-- this range is denoted in the most current Federal Trade Commission labeling requirements at all gas pumps dispensing E-85 currently. And I've included a picture of that sticker on the letter that was handed out to you guys. Overall, the dilemma present in the proposed change to the definition the E-85 outlined in LB736 surpasses the federal specification, therefore calling for the use and sale of an unauthorized fuel in the United States, while also presenting issues with running internal combustion engines utilizing higher blends during the winter. However, Senator Bostar, through LB736, has also brought to our attention the need to ensure that our state-level statutes are aligned with our federal definitions and specifications.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 27, 2022

So the Nebraska Ethanol Board today recommends to realign the definition of E-85 with the current federal standard of 51 to 83 percent by volume that would be blended with gasoline. Thank you and I would happily take your questions.

BOSTELMAN: Thank you, Mr. Wagner. Are there any questions from the committee? Seeing none, thank you for your testimony--

REID WAGNER: Thank you.

BOSTELMAN: Thank you for staying today. I do believe we'll close the hearing on LB736. Thank you for staying today. Thank you for your testimony.